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Nos. 759, 760, 781, 782, and 811

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1946

Nos. 759, 760, 781 and 782

THE UNITED STATES OF AMERICA, PETITIONER

v.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, RESPONDENTS

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the District Court on various aspects of the case (R. 202–204; 328–329) have

not been officially reported. The Court's findings of fact and conclusions of law in the contempt proceedings (R. 90–99) are set forth with supporting references to the record in an appendix to this brief (pp. 109–127).

JURISDICTION

Judgments and sentences for contempt and a preliminary injunction were entered December 4, 1946, in the District Court. On December 5, 1946, defendants[1] filed notices of appeal from the judgments of contempt and, on December 19, 1946, notice of appeal from the restraining orders that were issued November 18, 1946 and November 27, 1946, and from the preliminary injunction. On December 6, 1946, pursuant to order of the District Court (R. 510), on motion of plaintiff (R. 511), the original record was transmitted to the Court of Appeals for the District of Columbia, and the appeals from the judgments of contempt were docketed as Nos. 9436 and 9437. On the same day, pursuant to order of the court below, on motion of plaintiff the original record on those appeals was transmitted to this Court; and plaintiff filed its petition in Nos. 759 and 760 for writs of certiorari to Nos. 9436 and 9437 below, which this Court granted on December 9,

[1] For convenience defendants in the District Court are referred to herein as defendants and the United States is referred to as plaintiff since both parties are respondents and petitioners here.

1946. On December 12, 1946, defendants filed their petitions in Nos. 781 and 782 for writs of certiorari to Nos. 9436 and 9437 below, which this Court granted on December 16, 1946. On December 21, 1946, defendants' appeal from the restraining orders and the preliminary injunction was docketed in the court below as No. 9453; and defendants filed their petition in No. 811 for a writ of certiorari to No. 9453 below, which this Court granted on December 23, 1946. The cases have not been heard, considered, or decided by the Court of Appeals. The jurisdiction of this Court rests upon the provisions of Section 240 (a) of the Judicial Code, as amended (28 U. S. C. 347 (a)).

QUESTION PRESENTED BY PLAINTIFF IN NOS. 759 AND 760

Did the District Court in this case have the power under the Constitution and Statutes by the issuance of a temporary restraining order to prevent irreparable injury to the people of the United States, to prevent interference with sovereign functions of the United States, and to protect the District Court's jurisidiction to decide questions of law and fact incident thereto?

QUESTIONS PRESENTED BY DEFENDANTS IN NOS. 781 AND 782

I. Did the District Court of the United States have jurisdiction, under the First and Thirteenth Amendments to the Constitution of the United

States, to issue the temporary restraining order of November 18, 1946?

II. Did the District Court of the United States have jurisdiction or authority, under the Act of March 23, 1932, Ch. 90 (47 Stat. 70, 29 U. S. C. 101–115), and under the Act of October 15, 1914, Ch. 323, Sec. 20 (38 Stat. 738, 29 U. S. C. 52), to issue the temporary restraining order of November 18, 1946?

III. Did the District Court of the United States have jurisdiction to extend the *ex parte* temporary restraining order of November 18, 1946, without the consent of the defendants below?

IV. Is a temporary restraining order, issued without jurisdiction or authority, a nullity which can be disregarded with impunity? Assuming it cannot be so disregarded, was it not mandatory in these cases to have a trial by jury?

V. Was the rule to show cause in this case, supported as it was by an affidavit based on hearsay, belief and information, and failing to describe the proceeding, as being in criminal contempt, and not being an independent proceeding, sufficient to sustain a judgment in criminal contempt?

VI. Were the status and interest of respondents [plaintiff] in this case such as to permit a judgment in civil contempt?

VII. Did the Court below err in admitting prejudicial and irrelevant testimony during the trial on the rule to show cause?

VIII. Can petitioner, United Mine Workers of America, an unincorporated association, be held responsible for the allegedly wrongful and criminal acts of any individual officer, member or agent in the absence of clear proof of actual participation in, or actual authorization of, such acts, or ratification of such acts after actual knowledge thereof?

IX. Are the fines imposed on petitioners excessive and are they repugnant to the Fifth and Eighth Amendments to the Constitution of the United States?

X. May civil and criminal contempts be tried simultaneously under a single rule to show cause?

QUESTIONS PRESENTED BY DEFENDANTS IN NO. 811

1. Did the District Court of the United States have jurisdiction under the First and Thirteenth Amendments to the Constitution of the United States to issue the temporary restraining order of November 18, 1946, to extend the said temporary restraining order on November 27, 1946, and to issue the preliminary injunction on December 4, 1946?

2. Did the District Court of the United States have jurisdiction or authority under the Act of March 23, 1932, Ch. 90 (47 Stat. 70, 29 U. S. C. 101–115), and under the Act of October 15, 1914, Ch. 323, Sec. 20 (38 Stat. 738, 29 U. S. C. 52), to issue the temporary restraining order of November 18, 1946, and to extend the said restraining order on

November 27, 1946, and to issue the preliminary injunction on December 4, 1946?

CONSTITUTIONAL PROVISIONS, STATUTES, AND EXECUTIVE ORDER INVOLVED

The following Constitutional provisions, statutes, and executive order are set forth in the Appendix hereto at pp. 82-108:

(1) Constitution, Article III, Sections 1 and 2;

(2) Judicial Code, Section 24 (1) (28 U. S. C. 41 (1));

(3) The Federal Declaratory Judgment Act (Act of June 14, 1934, as amended, Judicial Code, Section 274d (28 U. S. C. 400));

(4) The War Labor Disputes Act (Act of June 25, 1943, c. 144, 57 Stat. 163 (2 U. S. C. Supp. V, 251, 50 U. S. C. App., Supp. V, 309, 1501-1511));

(5) The pertinent portion of Section 9 of the Selective Training and Service Act of 1940 as amended (Act of September 16, 1940, c. 720, 54 Stat. 885, (50 U. S. C. App. 301 *et seq.*), as amended by Act of June 25, 1943, 57 Stat. 163 (50 U. S. C. App. Supp. V, 1501 *et seq.*));

(6) The Norris-LaGuardia Act (Act of March 23, 1932, c. 90, 47 Stat. 70 (29 U. S. C. 101-115));

(7) The Clayton Act (Act of October 15, 1914, c. 323, Section 20, 38 Stat. 738 (29 U. S. C. 52));

(8) Executive Order No. 9728, of May 21, 1946, authorizing the Secretary of the

Interior to take over the bituminous coal mines.

STATEMENT

On or about April 1, 1946, practically the entire body of coal miners represented by the United Mine Workers of America employed in the bituminous coal mines of the nation engaged in a work stoppage. This resulted in a cessation of the flow of bituminous coal from the mines to the railroads, shipping, public utilities, and industrial plants of the nation, and to facilities owned and operated by the United States which require coal for their operation (R. 1–2, 90–91, 289, 335, 486).

On May 21, 1946, the President of the United States, finding that the production of bituminous coal was required for the war effort and was indispensable for the continued operation of the national economy during the transition period from war to peace, issued Executive Order 9728 "in the interest of the war effort and to preserve the national economic structure in the present emergency" (R. 2, 9–10, 207, 335–336). This Executive Order, issued pursuant to powers vested in the President by the Constitution and laws of the United States, including the War Labor Disputes Act, authorized and directed the Secretary of the Interior to take possession of all bituminous coal mines, the operations of which were interrupted or threatened with interruption because of work stoppages, and to operate them or arrange for their operation in such manner as he might deem

necessary, and to do all things necessary for, and incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by said mines (Ibid.).[2]

The Secretary of the Interior forthwith took possession of practically all of the bituminous coal mines of the Nation (R. 2, 208, 210, 336–342), and since that time the United States has been and now is in possession of the mines (R. 2, 36, 211, 261, 289, 345–398, 486).

In accordance with the authorization contained in Executive Order 9728, the Secretary of the Interior entered into negotiations with representatives of the United Mine Workers of America, looking toward changes in the terms and conditions of employment in the mines. As a consequence, an agreement, commonly referred to as the Krug-Lewis Agreement, was executed on May 29, 1946, by the Secretary of the Interior, as Coal Mines Administrator, and John L. Lewis, as President of the United Mine Workers of

[2] Executive Order 9728, in Section 2, directed the Secretary to operate the mines in accordance with terms and conditions of employment in effect at the time of taking possession, "subject to the provisions of Section 5 of the War Labor Disputes Act." Section 3 of the Executive Order authorized the Secretary, pursuant to Section 5 of the War Labor Disputes Act, following such negotiations with representatives of the employees as he might deem necessary, to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government (Ibid.).

America (R. 3, 10–15, 211, 399–403, 404). On May 31, 1946, upon application made to it by the United States (R. 3, 211, 403), the National Wage Stabilization Board issued an order, pursuant to Section 5 of the War Labor Disputes Act, approving the substantial changes in wages and other terms and conditions of employment contained in the Krug-Lewis Agreement, and directing that they put into effect at the mines. This order was approved by the President of the United States on May 31, 1946 (R. 3, 19–21, 211, 404–405). Thereafter the mine workers were instructed by the defendants to return to their work, and operations in the mines were resumed under the new terms and conditions.[3]

The Krug-Lewis Agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bitumi-

[3] Section 5 of the War Labor Disputes Act, to the extent here relevant, provides that the Government agency operating a mine, or a majority of the employees of such mine, or their representatives, may apply to the Board for a change in wages or other terms or conditions of employment in such mine. After such hearings and investigations as it deems necessary, the Board may order any changes in such wages, or other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or any Executive order issued thereunder. Any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such mine.

nous Coal Wage Agreement, dated April 11, 1945 and, "Except as amended and supplemented herein," carried forward the terms and conditions of various agreements which had existed between the defendant Union and the coal mine operators, including the National Bituminous Coal Wage Agreement of April 11, 1945 (R. 11, 211, 399).

On October 21, 1946, defendants sent a letter to the Secretary of the Interior discussing certain interpretations of the Secretary under the Krug-Lewis Agreement (R. 4, 26–27, 217, 408–409). This letter asserted that Section 15 of the National Bituminous Coal Wage Agreement (see R. 18, 217) had been carried forward into the Krug-Lewis Agreement; that under that section either party might give ten days' notice in writing of a desire for a negotiating conference which the other party was required to attend; that at the end of fifteen days after the beginning of the conference, either party might give to the other a written notice of termination, to be effective five days after receipt; and that accordingly a joint conference was requested "for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the National Bituminous Coal industry." It was suggested that the conference be held at Washington, D. C., on November 1, 1946 (R. 217, 409).

On October 22, 1946, the Coal Mines Administration advised defendants by letter (R. 4, 27–29, 217,

410–411) that, for various reasons, Section 15 of the National Bituminous Coal Wage Agreement had not been carried forward into the Krug-Lewis Agreement; that accordingly the defendants' letter of October 21, 1946 could not be treated as a notice or request given pursuant to any existing contract provision; and that the Krug-Lewis Agreement was considered to be in full force and effect. It was further stated that the Coal Mines Administration was nevertheless ready at any time "to discuss matters affecting the operation of the bituminous coal mines under the Krug-Lewis Agreement * * *" (R. 28, 411). After further exchanges of correspondence (R. 4–5, 29–30, 220, 411–413), conferences were held in Washington, D. C., attended by representatives of the Government and of the United Mine Workers of America, beginning on November 1, 1946, and continuing, from time to time, to and including November 14, 1946. These conferences were without prejudice to the contentions of the parties respecting the right claimed by defendants to terminate the Krug-Lewis Agreement by unilateral notice (R. 5, 29, 30, 220–223, 301–302, 412–413). During the course of the meeting on November 11, 1946, the representatives of the defendant union for the first time advanced specific proposals for changes in the wages and other terms and conditions of employment in effect at the mines. Those proposals included changes of a far-reaching nature which would have involved a substantial increase in

the cost of production of coal (R. 5, 221–223, 237, 298–299, 305).

The Government specifically pointed out to the representatives of the Union on the first and again on the last day of these meetings that they had ready relief and a remedy under Section 5 of the War Labor Disputes Act to apply to the Wage Stabilization Board for any fair and reasonable changes in the wages or terms and conditions of employment. It was further pointed out that the Government was looking forward to the earliest practicable return of the coal mines to private operation, and that both the Union and the operators had stated that they too wanted early termination of Government possession. The Government accordingly suggested that the defendants and the owners of the coal mines, who were then desirous of commencing negotiations, discuss the matter. (R. 30–31, 222, 298, 482—Krug letter.)

The defendants, however, refused to negotiate with the operators of the coal mines and failed to avail themselves of the statutory remedy provided in Section 5 of the War Labor Disputes Act. (R. 30–31, 298, 303–305, 482–Ex. 39, 493–494.) Instead on November 15, 1946, defendants sent a letter to the Secretary of the Interior stating (R. 5–6, 34, 64, 223, 413):

> Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis

agreement as of 12:00 o'clock, P. M., midnight, Wednesday, November 20, 1946.

Upon receipt of this letter, and in reply thereto, the Secretary of the Interior sent a letter to defendants advising that "you have no power, under the Krug-Lewis Agreement of May 29 or under the law, by unilateral declaration to terminate the contract which by its terms 'covers for the period of Government possession the terms and conditions of employment.'" (R. 6, 34–35, 482–Ex. 39.) However, the defendants sent to the members of the Union a letter which reproduced in full the letter of November 15, 1946, purporting to terminate the Krug-Lewis Agreement. The letter addressed to the members of the United Mine Workers was stated to be for their "official information." In addition defendants released to the public press copies of their letter of November 15, 1946 addressed to the Secretary of the Interior. (R. 223, 279–282, 284–286, 484–485.)

It is and has been the long-established policy of the United Mine Workers of America, rigidly adhered to by its members, that miners will not work in the mines in the absence of a contract and that, upon the mere declaration by the United Mine Workers of America or its president that no contract exists, the miners cease work. No other stoppage order ever goes out. Defendants' notice of termination of the Krug-Lewis Agreement effective November 20,

1946 was in fact, therefore, an order to strike. (R. 6, 37, 282–283, 483.)

On November 18, 1946, the United States filed a verified complaint in the District Court against the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America. (R. 1–51.) The complaint, after setting forth the facts substantially as outlined above and the irreparable injury to the people of the United States which would result from the threatened work stoppage in the bituminous coal mines and for which there was no adequate remedy at law, prayed for a declaratory judgment. The United States sought a determination that defendants had no right or authority, by unilateral action, to terminate the Krug-Lewis Agreement, and that the issuance of notice by defendants to the coal miners that the Krug-Lewis Agreement was terminated or terminable by defendants or that there was no contract in effect at the bituminous coal mines in the Government's possession was unlawful, and void. (R. 7–8.) The complaint also prayed for a preliminary injunction against such action by defendants, pending final determination of the case, and for a temporary restraining order, pending hearing on the preliminary injunction.

Simultaneously with the filing of the complaint, the United States filed supporting affidavits setting forth specifically the irreparable injury

which would result to the United States from a work stoppage in the mines.[4]

It was shown that the public utility and railroad systems of the nation, the industrial plants, and the shipping industry would be paralyzed; that widespread unemployment would necessarily follow; that the health and welfare of the nation would be gravely threatened; that the effectiveness of the nation's military and naval forces, particularly those abroad, would be seriously threatened; that foreign coal commitments could not be met; and that overseas shipments of food and other supplies and the entire rehabilitation program in occupied countries would be jeopardized.

On the basis of the verified complaint and on the affidavits the District Court issued a temporary restraining order which in substance directed that the defendants withdraw the notice purporting to terminate the Krug-Lewis Agreement. The restraining order, by its terms, was to expire on November 27, 1946, unless extended, and the motion for a preliminary injunction was set for hearing on that day (R. 60–61).

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[4] Affidavits were submitted by the Secretary of the Interior (R. 36–38); the Secretary of the Navy (R. 39); the Secretary of War (R. 40); the Administrator of the Civilian Production Administration (R. 41–43); the Managing Director of Ship Operations, United States Maritime Commission (R. 44–46); the Chairman of the Federal Power Commission (R. 46–48); the Acting Surgeon General of the United States Public Health Service (R. 48–49); and the Director of the Office of Defense Transportation (R. 49–51).

Defendants were served on November 18, 1946, with copies of the complaint, affidavits, Points and Authorities in support of the application for the temporary restraining order, and the temporary restraining order (R. 61, 63–64). They took no steps to vacate the temporary restraining order. Nor did they comply with it (R. 503–505, see R. 313–314). Consequently, on or about November 20, 1946, a strike in the bituminous coal mines in the Government's possession went into effect, and the production of bituminous coal practically ceased (R. 67–68, 289–292, 487).

On November 21, 1946, the United States filed a petition in the district court alleging that defendants had wilfully, unlawfully, and deliberately disobeyed and violated the temporary restraining order, and praying for a rule to show cause why defendants should not be punished for contempt of court (R. 66–72). A rule was granted requiring defendants to appear on November 25, 1946, and show cause why they should not be punished for contempt. The rule directed that if, upon the return, it should be found that the alleged contempt had not been sufficiently purged, a trial would be held on November 27, 1946, at which time defendants would be tried on charges of contempt by the court, sitting with an advisory jury, unless such jury were waived by defendants (R. 72–73).

On the return day, defendants appeared and made a return to the rule to show cause as follows (R. 313, 503):

The defendants and each of them respectfully state to the Court that they and each of them, since the giving of said notice of November 15, 1946, since the issuance of Your Honor's temporary restraining order of November 18, have done no act nor spoken any word pertaining to said notice or in reference to permitting if to continue in effect.

The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto.

The defendants and each of them, Your Honor, therefore respectfully say to this Court that the situation with respect to such notice of November 15, 1946, for the reasons herein stated remains unchanged.

The defendants and each of them respectfully deny the jurisdiction of this Honorable Court to have issued the temporary restraining order and the rule to show cause issued thereunder.

On November 26, 1946, the day before the trial, defendants served a motion to discharge and vacate the rule to show cause (R. 82–85), contending (1) that the temporary restraining order was void because the case grew out of a labor dispute, and the court was without jurisdiction over the subject matter under the provisions of the Norris-LaGuardia Act and Section 20 of the Clayton Act; (2) that equity will not intervene in a case charging violation of the War Labor Disputes Act; (3) that the petition for the rule to show cause

charged a criminal contempt and the strict rules of criminal procedure must be followed; and (4) that the temporary restraining order was void because it violated the First, Fifth, and Thirteenth Amendments to the Constitution of the United States.

This motion was argued at length on November 27, 1946,[5] and again on November 29, 1946 (R. 111–201). At the conclusion of the argument, defendants' motion was overruled (R. 90). District Judge Goldsborough delivered an opinion holding that the Norris-LaGuardia Act and the Clayton Act did not apply to this action brought by the United States, that the court had power to maintain the *status quo* until there could be a judicial determination concerning the contract, that the petition and rule to show cause, under the circumstances, satisfied the requirements of criminal procedure, and that the temporary restraining order violated no constitutional rights of defendants (R. 202–205). Defendants thereupon pleaded not guilty, waived the advisory jury, and the case proceeded to trial before the court (R. 205). The Government produced eight witnesses, all of whom were subject to cross-examination by the defendants. Defendant Lewis did not take the stand, and no witness was called by either of the defendants.

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[5] At 2:45 p. m. on November 27, 1946, during this argument and in view of the pendency of the hearing, the temporary restraining order, previously issued, was extended "for cause" (R. 85–86, 158–161).

After the trial (R. 205–319)* the court, on December 3, 1946, made findings of fact and conclusions of law (R. 90–99, 316).

The court found that the above facts had been established beyond a reasonable doubt and, in addition, that defendants, by permitting the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, to remain outstanding, (1) instigated, induced, and encouraged the workers at the mines in the possession of the United States to interfere by strike, etc., with the operation of said mines, (2) completed the calling of a strike at said mines, (3) interfered with and obstructed the exercise by the Secretary of the Interior of his functions under Executive Order 9728 and the War Labor Disputes Act, and (4) interfered with the court's jurisdiction and impaired and obstructed the determination of the case by the court. The court also found that bituminous coal was indispensable for the continued operation of the national economy during the transition period from war to peace and that the work stoppage had caused and did continue

* Before the trial, defendants were apprised of the fact that they were charged with both criminal and civil contempt (R. 66–68, 72–73, 82, 84, 196–198, 204). They were also informed in advance of the names and identities of the witnesses to be called by the United States (R. 241–242). Defendants' counsel stated in the district court that they were not "accusing the Government with any lack of liberality with respect to any information, or with a lack of opportunity to meet their contentions. We know what they are." (R. 267.)

to cause irreparable injury to the United States, to the people of the United States and to the industry and economy of the United States.

The court concluded (R. 98–99) that in seizing and operating the mines under Executive Order 9728, the United States was at all times exercising its sovereign functions, derived from the Constitution and laws of the United States, that defendants by their action had obstructed and interfered with the exercise of these sovereign functions, that defendants had unlawfully coerced, instigated, induced and encouraged the mine workers at the mines in the Government's possession to interfere by strike with the operation of those mines, that defendants by their action had deliberately and wilfully disobeyed and violated the temporary restraining order, and that defendants had committed civil contempt and were guilty of criminal contempt of court beyond a reasonable doubt.

Thereafter, on December 4, 1946, the court imposed a fine on defendant United Mine Workers of America in the amount of $3,500,000 and on defendant John L. Lewis in the amount of $10,000 (R. 101–102, 329); and, on the basis of all the prior proceedings and after making specific findings, granted the Government's motion for a preliminary injunction (R. 102–109).

SUMMARY OF ARGUMENT

I

The pattern of the War Labor Disputes Act is plain. It provided reasonable and fair machinery for the settlement of industrial disputes, including as a last resort governmental seizure with consequent procedures for the establishment of fair changes in the wages and working conditions, to be made on the application of the Government or the workers. The Act also declared specifically as a national policy that it was unlawful by inducing a strike to interfere with the operation of plants or mines seized by the Government.

For five months after seizure of the coal mines in 1946, and after the making of a new labor agreement which, with approval under the War Labor Disputes Act, gave substantial new benefits to the miners, there was peace in the coal mines. Then, however, the defendants asserted a right to terminate the labor agreement which the Government denied because the agreement was by its terms to cover the entire period of Government possession. To resolve the disputed legal question the Government filed this suit.

The proposed unilateral termination of the agreement by the defendants was a serious threat to the country, because, under long standing policy of the defendants and of the miners, a mere declaration by defendants that no contract

existed was equivalent to a strike call. In view of the gravity of the threat to the country, as fully detailed in the findings of the District Court, the United States sought temporary injunctive relief until judicial disposition of the controversy. The necessity for such relief was clear and the propriety of such action, in view of the circumstances of this case, was fully supported by the basic principles unanimously enunciated in the only analagous case ever considered by this Court. *In re Debs,* 158 U. S. 564. Indeed, the historic power of a court of equity to issue a restraining order in a case such as this was not denied by defendants who contended rather that the Norris-LaGuardia and Clayton Acts immunized them.

II

The Norris-LaGuardia and Clayton Acts did not immunize the defendants nor place them beyond the reach of a court of equity in a case such as this. This Court has pointed out that the Norris-LaGuardia Act explicitly restated the public policy of the United States in 1932 in regard to industrial conflict, and redefined the area of such conflict that had best be left to economic forces and the pressure of public opinion and not subjected to the judgment of courts. *United States* v. *Hutcheson,* 312 U. S. 219, 231. It appears from the legislative history of the Norris-LaGuardia Act that it was not intended to apply to a case such as this. Moreover, the later tempo-

rary War Labor Disputes Act, with its express declaration of illegality of certain labor conduct, must be read with the Norris-LaGuardia Act as a harmonizing text.

Neither the policy, purpose, nor language of the Norris-LaGuardia Act extends to this case. It does not expressly include the United States and its legislative sponsors disavowed any intention so to do. Moreover, the language of the statute is wholly inappropriate to comprehend the United States.

Whatever immunity the defendants might have had under the Norris-LaGuardia Act, and in our opinion they had none, their action in this case was clearly unlawful, in view of the later War Labor Disputes Act.

III

Even if this Court should now decide, in this case of first impression, that the Norris-LaGuardia and Clayton Acts deprived the District Court of jurisdiction to grant injunctive relief here, that court nevertheless was properly exercising judicial power when the restraining order was issued. The defendants did not comply with the order. Rather the defendants made themselves the judges of its validity and by their action inflicted very substantial damage upon the United States.

Such conduct this Court unanimously condemned in *United States* v. *Shipp*, 203 U. S. 563, pointing out that if a court has no jurisdiction

to entertain a given case, the court alone, and not a party, has the right to decide that question. Similarly, in *Howat* v. *Kansas,* 258 U. S. 181, it was held that an injunctive order must be obeyed, however erroneous the action of the court may be, since it is for the court of first instance to determine the validity of an applicable law involved in the proceeding. In *Carter* v. *United States,* 135 F. 2d 858 (C. C. A. 5), this rule was specifically applied in connection with a restraining order in a labor dispute, to sustain a contempt conviction although there the court held that by reason of the Norris-LaGuardia Act there was no jurisdiction to have issued the restraining order. In that case the Circuit Court of Appeals said that the District Court had a new question of jurisdiction to solve and it alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act and that failure to comply with the order constituted a contempt.

At best, therefore, defendants' contention concerning the Norris-LaGuardia Act posed a question for decision by the District Court, and regardless of the ultimate decision of that question the court had power both to grant a temporary restraining order, in the circumstances here present, and to punish for contempt of it.

IV

The constitutional rights of the defendants were fully protected. The procedure in initiating the

contempt trial was correct and the defendants were fully informed of the nature of the charges against them, which consisted of civil and criminal contempt, both properly triable in a single proceeding. Moreover, the defendants received the benefit of every right accorded in criminal contempt cases, including full cross-examination of the government's witnesses, freedom from self-incrimination, and proof of guilt beyond a reasonable doubt.

There can be no question of agency, under Section 6 of the Norris-LaGuardia Act or otherwise, in connection with the Union's guilt. The Union itself was under a duty imposed by a court order directed to it, and of which it had full notice, to take action which it could have taken properly through any officer or agent of the Union—its failure so to act constituted a contempt.

The defendants were not tried by jury but they raised no issue of fact, did not seek a jury trial, did not object to trial by the court alone, and were not entitled to a jury trial. In substance the defendants' position was to admit the facts but to urge only questions of law, principally the question concerning the applicability of the Norris-LaGuardia Act.

The fine imposed on each defendant was, under the circumstances of this case and on the evidence of damage to the United States contained in this record, appropriate, and within the ability of each of the defendants to pay.

The mandatory direction to the defendants to withdraw the strike notice no more imposed involuntary servitude on them or impaired their freedom of speech than would a direction by the court to the defendants to ring a bell or flash a light which might be a signal to the miners to return to work. The power of the court to direct such action, where necessary, has been uniformly upheld. *Virginian Ry.* v. *Federation,* 300 U. S. 515. Moreover, it is well settled that in the interests of the administration of justice a person may be compelled by a court to speak, if self-incrimination or privilege is not involved, even though the person would prefer to remain silent. *Howat* v. *Kansas,* 253 U. S. 181.

In any event there can be no serious question that the orders were constitutionally made in this case, for, the danger to the life of the community from the failure of the defendants to withdraw the strike notice and from their instigation of a strike, met the most rigid test of "clear and present danger." See *Gompers* v. *Bucks Stove & Range Co.,* 221 U. S. 418, cited with approval by Mr. Justice Holmes in *Schenck* v. *United States,* 249 U. S. 47 52.

ARGUMENT

I

TRADITIONAL EQUITABLE PRINCIPLES REQUIRED THE GRANTING OF ANCILLARY INJUNCTIVE RELIEF BY THE DISTRICT COURT IN THIS CASE

1. *The Background*

On December 17, 1941, ten days after Pearl Harbor, President Roosevelt convened a conference of representatives of labor and of industry to consider what steps should be taken or were necessary to strengthen the machinery for the prompt and peaceful settlement of labor disputes and for ensuring full war production during the settlement of disputes. The National War Labor Board was established on January 12, 1942, by Executive Order 9017 (7 F. R. 237),[1] following unanimous agreement by that conference.

The majority of the cases considered by the War Labor Board were adjusted on the basis of the Board's decisions, but in several instances of the most serious character the decisions of the Board were not accepted by the disputants and the cases were required to be referred to the President. When in such cases the President, after an investigation, determined that the parties had refused to settle their dispute by negotiation and

[1] The information with respect to the War Labor Board is taken from the Hearings before the Select Committee of the House of Representatives to Investigate the Montgomery Ward Seizure, 78th Cong., 2d Sess.

agreement and that the national interest required the continued operation of the facilities involved, he directed officers of the United States to take possession and operate the plant or facilities. In 1942 the President directed the Office of Defense Transportation to take over and operate the Toledo, Peoria and Western Railroad;[8] the Secretary of the Navy to take over a plant of the General Cable Company;[9] the Secretary of War to take over the S. A. Woods Machinery Company.[10] The fourth case arose out of a strike commencing on May 1, 1943, in the bituminous coal mines.

In the latter case the War Labor Board had assumed jurisdiction of the dispute between the United Mine Workers and the coal mine operators, in which an order to strike on May 1, 1943, had been issued by the union. Though the President of the United States had directed the leaders of the union to countermand the strike order, the union failed so to act and the mine workers walked out of the mines on the date fixed. Accordingly, on the same day the Presi-

[8] Executive Order 9108 (7 F. R. 2201). In this case the railroad company refused to comply with a direction of the War Labor Board that a labor dispute be submitted to arbitration, following which a strike occurred.

[9] Executive Order 9220 (7 F. R. 6413). In this instance a labor union had called a strike following its refusal to accept a Board decision denying a general wage increase.

[10] Executive Order 9225 (7 F. R. 6627). Here the takeover followed a refusal by the company to settle a labor dispute on the basis of a War Labor Board directive.

dent directed [11] the Secretary of the Interior to take possession and operate the coal mines.

Subsequent to Government seizure, on May 3, 1943, the president of the United Mine Workers of America announced a "15-day truce" and notified the miners to return to work on May 5, 1943. Production was thus restored for the time being and continued until May 31, 1943. On June 1, 1943, the miners again walked out of the mines. That strike ended on June 7, 1943, with June 20, however, set by the union as a new deadline for a revised wage agreement. Two days before that deadline, the War Labor Board issued a final order in the dispute affecting the bituminous coal industry, extending the previous contract, as already amended by the Board, until March 31, 1943, denying the wage increases as demanded, and disapproving for the time being the demand for "portal to portal" pay. The mine workers again left the pits, and on June 21, 1943, the mines were again practically entirely closed down. The War Labor Board referred the case to the President who, on June 23, 1943, issued a statement terming the walkout intolerable. After further conferences between the Secretary of the Interior and the leaders of the United Mine Workers of America, the union ordered the men to return to their jobs. The union fixed a new deadline, October 31, 1943, for the consummation of a new agreement or another strike.

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[11] Executive Order 9340 (8 F. R. 5695).

The War Labor Disputes Act was enacted by the Congress on June 25, 1943. When the bill was reported to the House of Representatives by its Committee on Military Affairs, on May 11, 1943, the Committee stated (H. R. Rep. No. 440, 78th Cong., 1st Sess., p. 6):

> The legislation is extremely urgent and your committee believes that it should be speedily enacted into law because of the existence of what is commonly known as a truce involving more than a half million workers in the coal mines of the country covering that particular industry in some 37 States of the Union where coal is produced for a multitude of purposes and is essential to the successful prosecution of the war. Without adequate production of coal the war effort would be greatly retarded and it is entirely possible that if the President is not permitted to use his independent discretion under authority of legislation enacted by the Congress, he will be greatly handicapped in the settling of labor disputes and in the continuance of full production of war materials, particularly in the coal industry and in war plants using coal for fuel, including transportation by steam railways. The subject is of such vital importance to the successful continuance of the war effort by the Government that the committee feels that the legislation proposed in the bill should be enacted without delay, and with that in

view, it has reported the bill favorably with the recommendation that it pass.

Though enacted by the 78th Congress, the Act had its antecedents in the 77th Congress. One of its antecedents, S. 2054, was reported favorably by the Senate Committee on the Judiciary, which strongly recommended its enactment (S. Rep. No. 846, 77th Cong., 1st Sess., p. 2):

> The bill is in the national interest. It is a bill for all of the people. It is not a measure in behalf of the employer. It is not a measure in behalf of the employee. It is a measure to proclaim the sovereignty of the United States and all of the people of America. It denies the sovereignty of any individual or any group which may seek to coerce or defy the Government of the United States in the hour of its danger and in the time of its peril.

The pattern of the statute is plain. It created a comprehensive and integrated labor code covering, during the limited life of the act, disputes from their origin through their disposition by the War Labor Board, and providing for presidential seizure in necessary cases. Labor disputes which might lead to substantial interferences with the war effort were to be adjusted, if possible, by collective bargaining or conciliation, failing which they were to be heard and determined by the Board (Sec. 7). Only in the event resolution in that manner proved impossible, was the extreme measure of Government seizure to be employed

(Sec. 3). Once, however, the emergency power of Government possession and operation was called into play, established terms and conditions of employment were to be maintained subject to change only by order of the Board (Secs. 4 and 5). All the powers of the sovereign were to be available in support of the presidential seizure. After the Government take-over, it became unlawful for any person "to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slowdown, or other interruption, with the operation of such plant, mine, or facility" or to aid such an act in any other way (Sec. 6). Any such conduct tending to interfere with the continued operation of properties in the possession of the Government was plainly and unequivocally declared unlawful.[12]

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[12] The War Labor Disputes Act was passed over the veto of President Roosevelt. However, so far as Sections 1 through 7, which established the pattern outlined above, were concerned, he stated (S. Doc. No. 75, 78th Cong., 1st sess., pp. 1–2):

"* * * I am unalterably opposed to strikes in wartime. I do not hesitate to use the powers of Government to prevent them.

"It is clearly the will of the American people that for the duration of the war all labor disputes be settled by orderly procedures established by law. It is the will of the American people that no war work be interrupted by strike or lock-out.

"American labor as well as American business gave their 'no strike, no lock-out' pledge after the attack on Pearl Harbor.

"That pledge has been well kept except in the case of the leaders of the United Mine Workers. For the entire year

For five months after Government seizure of the bituminous coal mines on May 22, 1946, the defendants in this case did not challenge the national policy expressed in the War Labor Disputes Act. The wages and terms and conditions of employment in the mines which had existed prior to the seizure and with which the defendants were dissatisfied had been changed by the Krug-Lewis Agreement and by orders of the National Wage Stabilization Board.[13]

2. *The emergency commencing in October 1946*

In October 1946, however, for the first time defendants asserted a right to terminate the Krug-Lewis Agreement, which right, in the opinion of the Government, the defendants did not possess. In November 1946, the defendants purported to termi-

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of 1942, the time lost by strikes averaged only five one-hundredths of 1 percent of the total man-hours worked. The American people should realize the fact—that 99.95 percent of the work went forward without strikes, and that only five one-hundredths of 1 percent of the work was delayed by strikes. That record has never before been equaled in this country. It is as good or better than the record of any of our allies in wartime.

"But laws are often necessary to make a very small minority of people live up to the standards that the great majority of people follow. Recently there has been interruption of work in the coal industry, even after it was taken over by the Government. I understand and sympathize with the general purpose of the war-disputes bill to make such interruptions clearly unlawful.

"The first seven sections of the bill are directed to this objective." * * *

[13] It may be noted in passing, that the terms and conditions so established were at the time acclaimed by the defendants herein (R. 488).

nate the Krug-Lewis Agreement. Thereupon, to resolve the disputed legal controversy the United States filed suit pursuant to the Federal Declaratory Judgments Act (28 U. S. C. Sec. 400). In this action, which came squarely within the provisions of that statute, the defendants were duly served with process and, accordingly, the District Court had jurisdiction both of the subject matter of the action and of the defendants in the action. This is uncontroverted.

Also not disputed is the fact, abundantly clear from the record, that it has been for years and is the policy of the United Mine Workers of America, rigidly adhered to by its members, that the miners should not work in the mines in the absence of a contract covering terms and conditions of employment, and that upon the mere declaration by either of the defendants that no such contract exists, the miners in a body cease work. At the time of the defendants' declaration that no contract would exist on November 20, 1946, which declaration was widely publicized and brought to the attention of the bituminous coal miners of the Nation, the Government was acutely aware of the injury inflicted upon the people of the country by previous work stoppages in the bituminous coal mines.

That the action of the defendants represented a threat to the life of the community can not be doubted. The uncontradicted evidence con-

tained in the record fully supports the findings of the District Court that:

> The characteristics of the economy of the United States make it peculiarly vulnerable to a stoppage in coal production, largely because of its great dependence on machines, about 43 percent of all energy produced in the United States being derived from bituminous coal. Four-fifths of all energy used in driving locomotives on Class 1 railroads is derived from bituminous coal; about four-fifths of all fuels and energy-producing material used in the production of steel is derived from bituminous coal; over 60 percent of all energy used in the production of electric power by public utilities is derived from bituminous coal; and about four-fifths of all energy obtained for electric power is derived from bituminous coal. Over 80 percent of Class 1 railroads, over 60 percent of public utilities and steel-producing industries would have to shut down completely within sixty days if the current coal stoppage continue for that length of time.
>
> If the current work stoppage were to continue for a sixty-day period, there would be a decline in total employment of at least 5,000,000 full-time workers and the national income would decline from the present rate of $170,000,000,000 per year to a rate of $150,000,000,000 per year with a resulting loss in income paid to workers at the rate of considerably more than $1,000,000,000 per month, and with a loss of national income, a

fraction of which has been estimated at one billion to one and one-quarter billion dollars during that period. A loss of even one billion dollars in income payments, only a fraction of the loss which would actually be suffered from a continued work stoppage, would result in a loss to the United States of tax revenues of about $280,000,000.

The current work stoppage has caused and will continue to cause irreparable injury to the plaintiff, to the people of the United States, and to the industry and economy of the United States.

The coal produced by the mines now affected by the work stoppage is indispensable for the continued operation of the national economy during the transition from war to peace. (R. 98, 107–108.)

The United States accordingly sought, as temporary relief in its action for declaratory judgment, to have the defendants recall the notice of termination in order to prevent irreparable public injury, at least until disposition of the legal controversy by a court of the United States.[14]

[14] The district court's power to grant the restraining order was not restricted by the circumstances that this proceeding was instituted pursuant to the Federal Declaratory Judgments Act (28 U. S. C. sec. 400). That Act "was not devised to deprive courts of their equity powers or of their freedom to withhold relief upon established equitable principles." *Great Lakes Co.* v. *Huffman*, 319 U. S. 293, 300. Cf. *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235 (App. D. C.), aff'd by equally divided court 319 U. S. 732. And the power to grant injunctive relief in such proceedings has been uni-

This Court, in the only case in which it has considered a similar problem, unanimously affirmed the propriety of such injunctive relief to protect the people of the country from a less serious threat to their welfare. *In re Debs*, 158 U. S. 564. Moreover, no case or statute has been found which denies to the United States the assistance of the equity powers of the judiciary for the protection of the life of the community.[15]

Indeed, less dominant public interests have been regarded as of primary importance in determining the propriety of injunctive relief. *Virginian Ry.* v. *Federation*, 300 U. S. 515; *Texas & N. O. R. Co.* v.

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formly upheld. See, e. g., *Crosley Corp.* v. *Hazeltine Corp.*, 122 F. (2d) 925 (C. C. A. 3), certiorari denied 315 U. S. 813; *Cresta Blanca Wine Co.* v. *Eastern Wine Corp.*, 143 F. (2d) 1012 (C. C. A. 2); *Interstate Natural Gas Co.* v. *Gully*, 8 F. Supp. 174 (S. D. Miss.), aff'd *Gully* v. *Interstate Natural Gas Co.*, 82 F. (2d) 145 (C. C. A. 5), certiorari denied 298 U. S. 688; *Moore Calculating Machine Co.* v. *Marchant Calculating Machine Co.*, 48 F. Supp. 84 (E. D. Pa.); *Mitchell & Weber* v. *Williamsbridge Mills*, 14 F. Supp. 954 (S. D. N. Y.); *F. G. Vogt & Sons* v. *Rothensies*, 11 F. Supp. 225 (E. D. Pa.); *Standard Acc. Ins. Co.* v. *Grimmett*, 32 F. Supp. 81 (W. D. La.); *Sunshine Min. Co.* v. *Carver*, 34 F. Supp. 274 (N. D. Idaho); Borchard, *Declaratory Judgments* (2d ed.) 454, 455; Anderson, *Declaratory Judgments*, sec. 114.

[15] See *United States* v. *San Jacinto Tin Co.*, 125 U. S. 273; *United States* v. *American Bell Telephone Co.*, 128 U. S. 315, 367; *United States* v. *Richert*, 188 U. S. 432; *Heckman* v. *United States*, 224 U. S. 413, 439–442; *Sanitary District* v. *United States*, 266 U. S. 405, 425, 426; cf. *Hurley* v. *Kincaid*, 285 U. S. 95, 104, note 3; *United States* v. *Railway Employers Department*, 283 Fed. 479 (N. D. Ill.), 286 Fed. 228 (N. D. Ill.), 290 Fed. 978 (N. D. Ill.); *United States* v. *Frank J. Hayes* (D. Ind.), Nov. Term, 1919, Equity 312, unreported.

Railway Clerks, 281 U. S. 548; *Yakus* v. *United States*, 321 U. S. 414; *Scripps-Howard Radio, Inc.* v. *Federal Communications Commission*, 316 U. S. 4, 15; *Porter* v. *Warner Holding Company*, No. 793, October Term 1945 (decided June 3, 1946); *Great Lakes Co.* v. *Huffman*, 319 U. S. 293, 297, 298; *Securities & Exchange Commission* v. *U. S. Realty Co.*, 310 U. S. 434, 455; *United States ex rel Greathouse* v. *Dern*, 289 U. S. 352, 360, and cases there cited.

In the instant case, temporary injunctive relief was essential to preserve the *status quo* and to protect the country from irreparable injury, and such interim relief was not burdensome to defendants. They were merely required to postpone for the brief period of the temporary restraining order the calling of a strike.

The temporary injunctive relief which was granted by the District Court was proper under traditional equitable principles. Recognizing the great strides in judicial and statutory declaration of essential and lawful rights of labor during the past fifty years, nevertheless, the basic principle of the *Debs* case is necessarily valid as applied to the public interest threatened by the emergency here. For the—

> government, entrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the

exercise of the one and the discharge of the other * * *. The obligations which it is under to promote the interest of all, and to prevent the wrongdoing of one resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court * * * while it is not the province of the government to interfere in any mere matter of private controversy between individuals, or to use its great powers to enforce the rights of one against another, yet, whenever the wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are entrusted to the care of the Nation, and concerning which the Nation owes the duty to all the citizens of securing to them their common right, then the mere fact that the government has no pecuniary interest in the controversy is not sufficient to exclude it from the courts, or prevent it from taking measures therein to fully discharge those constitutional duties. (*In re Debs, supra,* at 584 and 586.)[16]

[16] The necessity for vigorous governmental action to meet threats to the life of the community was indicated by Mr. Justice Holmes in an unpublished dissent in *Hitchman Coal & Coke Co.* v. *Mitchell* (245 U. S. 229):

"I have no doubt that when the power of either capital or labor is exerted in such a way as to attack the life of the community, those who seek their private interest at such cost are public enemies, and should be dealt with as such. * * *" *Holmes-Pollock Letters*, Vol. 2, p. 28, Harvard University Press (1941).

The defendants, while not denying the historic power of a court of equity to aid the Government in a case such as this, have contended that the Clayton Act and the Norris-LaGuardia Act placed them beyond the reach of the powers of the court in this case. That contention is erroneous.

II

THE NORRIS–LA GUARDIA ACT AND THE CLAYTON ACT DID NOT PLACE THE DEFENDANTS BEYOND THE REACH OF THE COURT'S JURISDICTION

It is evident from the language and legislative history of the Norris-LaGuardia Act and of the Clayton Act[17] that those laws were not intended to render the United States impotent to meet effectively, with the aid of a court of equity, a threatened disaster such as this. The restatement and clarification in the Norris-LaGuardia Act of the purposes which Congress had set forth in the Clayton Act was forecast in the comprehensive dissenting opinion of Mr. Justice Brandeis in *Truax* v. *Corrigan*, 257 U. S. 312, 354 and discussed by Mr. Justice Frankfurter in *United States* v. *Hutcheson*, 312 U. S. 219 and by Mr. Justice Black in *Allen Bradley Co.* v. *Local Union No. 3, International Brotherhood of Electrical Workers*, 325 U. S. 797.

[17] Act of March 23, 1932, c. 90, 47 Stat. 70 (29 U. S. C. 101-115); Act of October 15, 1914, c. 323, Section 20, 38 Stat. 738 (29 U. S. C. 52).

As this Court pointed out in the *Hutcheson* and *Allen Bradley* cases, *supra,* the Norris-LaGuardia Act explicitly restated the public policy of the United States in regard to industrial conflict and redefined the area of economic conflict that had best be left to economic forces and the pressure of public opinion and not subjected to the judgment of the courts. In thus clarifying the law applicable to such industrial conflict, the Congress also unequivocally indicated that the legislation was not intended to apply to a case such as this. Examination of the legislative history of the Norris-LaGuardia Act does not, in our opinion, leave room for any doubt on this point. Moreover, in a later "harmonizing text", the temporary War Labor Disputes Act, an express declaration of outlawry of certain labor conduct was added to the "interlacing statutes".

The Government's position here does not in any way detract from the vitality of the Norris-LaGuardia Act. This Court has held that, within the area of economic conflict to which it is addressed, the Norris-LaGuardia Act effectively bars governmental intervention, whether by injunction or otherwise. Furthermore, the policy of governmental neutrality in industrial disputes under normal conditions envisaged by the Norris-LaGuardia Act goes so far as to bar criminal proceedings which might tip the scales in favor of one party to the conflict. *United States* v. *Hutcheson,* 312 U. S. 219; see *United States* v.

American Federation of Musicians, 318 U. S. 741. But even in the area of economic conflict governed by the Norris-LaGuardia Act fraud and violence are not proper weapons in an industrial dispute (Section 4 (e) and Section 7).

It is, of course, beyond dispute that in the Norris-LaGuardia Act, the purpose of the Congress was to protect the right of employees to organize into unions and to engage in concerted lawful activities for the purpose of collective bargaining and other mutual aid and protection. And in the Wagner Act, 49 Stat. 449, this congressional purpose found further expression. However, though the Norris-LaGuardia and Clayton Acts are effective in insuring Governmental neutrality in cases involving labor disputes within their scope, they have no application here for neither the policy nor the purpose nor the language of those statutes extends to this case.

Admittedly, neither the Norris-LaGuardia Act nor the antecedent Clayton Act expressly includes the United States. Aside from this fact, and from the fundamental rule that a restrictive statute, no matter how broad its terms, does not comprehend the Government unless the Government is specifically mentioned,[18] it is manifest from the state-

[18] *United States* v. *Herron*, 20 Wall. 251; *Dollar Savings Bank* v. *United States*, 19 Wall. 227; *United States* v. *Fox*, 94 U. S. 315; *Guarantee Title & Trust Co.* v. *Title Guaranty & Surety Co.*, 224 U. S. 152; *United States* v. *Cooper Corporation*, 312 U. S. 600; *United States* v. *Hoar*, 26 Fed. Cas. 329 #15373 (D. Mass.); Black, *Interpretation of Laws*, Second Edition, p. 94.

ments of the legislators that the Norris-LaGuardia Act was not intended to affect the Government's right to seek injunctive relief in a case such as this.

The legislative history of the Act provides confirmation that the reference in Section 2 to the "interference, restraint or coercion of employers of labor, or their agents" is a reference to private individuals and not to the United States. The history of the Act is one of improper practices by private employers. (H. Rep. No. 669, 72d Cong., 1st Sess., p. 3 ff; S. Rep. 163, 72d Cong., 1st Sess., p. 15.)

The sponsors of the Act, who, of course, were familiar with the *Debs* case, repeatedly disavowed an intention to affect the Government's right to seek injunctive relief when necessary for the functioning of the Government.

Representative LaGuardia,[19] in answer to a proposed amendment which would have specifically

[19] The contemporaneous legislative history contains no statement by Senator Norris which is illuminating on this question. However, in his autobiography, "Fighting Liberal" (MacMillan Co., 1945), Senator Norris stated (p. 316):

"I have had few personal contacts with John L. Lewis, or with any large number of his associates, but I feel strongly that no man should strike against his country in time of war. No man, representing either management or labor, should resort to strike methods in order to enforce demands in time of deadly national peril. It seems to me that the miners have forgotten the blessings and the rights given them by the anti-injunction law, and have followed false leaders

excepted the United States from the Act, stated (75 Cong. Rec. 5503):

> I do not see how in any possible way the United States can be brought in under the provisions of this bill.

Representative Michener, a member of the House Committee which reported the bill which became the Norris-LaGuardia Act, stated (75 Cong. Rec. 5464):

> Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law, to seek and obtain injunctive relief where the same is necessary for the functioning of the Government.

Representative Michener further stated (75 Cong. Rec. 5509):

> * * * This deals with labor disputes between individuals, not where the Government is involved. It is my notion that under this

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who care more for their own ambitions than they do for freedom and civilization in the world.

"Nothing contained in the provisions of the Norris-LaGuardia law, however, made it possible for the striking miners to take the course mapped in the recent crisis by miner leadership. Nothing in the fundamental decent principles embodied in that law—a law that attempts to safeguard and protect the liberties of the individual man—justified anyone in staying the hands of government in its glorious, noble attempts to save a civilized world from European dictatorship. Wrong committed in equalizing earlier injustices never becomes right. Right and justice are not achieved by piling wrong upon wrong."

> bill the Government can function with an injunction, if that is necessary in order to carry out the purpose of the Government. I should like to see this clarified, but I want to go on record as saying that under my interpretation of this bill the Federal Government will not at any time be prevented from applying for an injunction, if one is necessary in order that the Government may function.

Representative Schneider, who opposed the issuance of injunctions even when sought by the Government, clearly disclosed the understanding of Congress that the bill would not preclude the Government from securing such relief in an appropriate case [20] (75 Cong. Rec. 5514):

> And it has also been pointed out that the enactment of this bill will not take away from the Federal Government any rights which it has under existing law to seek and obtain injunctive relief where the same is deemed by Government officials to be necessary for the functioning of the Government. In other words, a tremendous field in which the injunction can still be used effectively will remain after the enactment of this bill.

Not only did the legislators omit any express reference to the United States in the Norris-LaGuardia Act, but the language they used in the

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[20] It is of interest to note that this was the understanding of District Judge Goldsborough who was a member of the Congress at that time and voted for the Norris-LaGuardia Act (R. 202).

Act is inappropriate to express any intention to comprehend the United States.

Thus, Section 2 is an express disapproval, as a matter of legislative policy, of the coercive practices which had been engaged in by private employers; Section 3 outlawed "Yellow Dog" contracts in private employment;[21] Section 4, immunizing membership in a labor organization or "employer organization," obviously does not relate to the United States which could not be thought of as a member of such an organization;[22] Section 7, in providing as a condition for the issuance of an injunction that "the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection" and that notice be given to "those public officers of the county and city within which unlawful acts have been threatened or committed, charged with the duty to protect complainant's property," could hardly have been intended to refer to the United States. Section 7, in further providing for an undertaking "with adequate security" as a condition to a temporary restraining order, and Section 10, in dealing with the "usual bond for costs" on appeal, if applicable to the

[21] Contrast the different public considerations reflected by 5 U. S. C. 652, relating to postal employees, and Title 3, Sec. 301, First Supplemental Appropriations Act, 1947, Pub. Law 663, 79th Cong., 2d Sess., relating to the right of employees of the Federal Government to strike.

[22] Cf. National Labor Relations Act, 49 Stat. 450, 29 U. S. C. 152.

United States, would represent unique exceptions to the contrary provision as to all other suits in which the United States is a party.[23]

In contrast with the peace-time purposes of the Norris-LaGuardia Act, the Congress declared in the War Labor Disputes Act that during the limited life of the statute, industrial conflict interrupting production in essential industries is not to be permitted to imperil the national welfare, but is to be resolved in accordance with the specific machinery created by that statute, and not by a test of economic strength. The Government cannot, therefore, be likened to the private employer to whom equity, under the Norris-LaGuardia Act, may not grant injunctive relief in the normal labor dispute. To hold that the Norris-LaGuardia Act denies the United States the aid of the federal courts in effectively carrying out emergency functions in the public interest under the War Labor Disputes Act would confound the meaning and defeat the purposes of both statutes.

In the War Labor Disputes Act, Congress enacted legislation "touching one of the most sensitive national problems" and once again "cut through all the tangled verbalisms" and enunciated a simple and clear policy and declaration of unlawfulness precisely applicable to this situation. Cf. *United States* v. *Hutcheson, supra,* at p. 235. For, Congress stated in Section 6 (a)

[23] 28 U. S. C. 870; Fed. Rules of Civ. Procedure 62(e). 65(c). See also, Advisory Committee notes to Rule 73.

of the War Labor Disputes Act that "whenever any * * * mine * * * is in the possession of the United States, it shall be unlawful for any person * * * to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such * * * mine * * *" 57 Stat. 165, 50 U. S. C. App. Supp. V, Section 1506 (a).

In reading these statutes together, it will be recalled that the War Labor Disputes Act was the response which the Congress made to wartime work stoppages, including those in the coal mines of which the Government had taken possession. Addressing itself to such threats to the survival of the nation, Congress specifically declared the instigation of such strikes to be unlawful after the Government made a seizure under the Act. Whatever immunity the defendants might have had under the Norris-LaGuardia Act, and we think they had none, it is manifest that their instigation of a strike in November, 1946, after the Government had taken possession of the mines, was unlawful. Therefore, even if Section 4 of the Norris-La Guardia Act conferred or declared a right of defendants, as against the United

States, to cause others to strike, that right ceased to exist on the passage of Section 6(a) of the War Labor Disputes Act, for Congress had changed the rules. As Mr. Justice Brandeis, in dissenting in *Truax* v. *Corrigan*, 257 U. S. 312, 354, stated:

> For conditions change; and, furthermore, the rules evolved, being merely experiments in Government, must be discarded when they prove to be failures.

That such a change in the rules cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act, this Court held in *Virginian Ry.* v. *Federation*, 300 U. S. 515. There this Court denied an employer refuge under the Norris-LaGuardia Act and held that the express obligation imposed upon the employer by the later Railway Labor Act to "treat" with the union, was to be enforced with the aid of an injunction, although no such remedy was provided by the latter Act. On behalf of the unanimous Court, Mr. Justice Stone said (at p. 563):

> It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief

which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act. See the *Railway Clerks* case, *supra*, 571; cf. *Callahan* v. *United States*, 285 U. S. 515, 518; *Walla Walla* v. *Walla Walla Water Co.*, 172 U. S. 1, 22; *International Alliance* v. *Rex Theatre Corp.*, 73 F. (2d) 92, 93.

It is submitted, in view of the foregoing, that the Norris-LaGuardia and Clayton Acts did not place the defendants beyond the reach of the court's jurisdiction in this case.

III

THE CONTEMPT JUDGMENTS ARE VALID SINCE IN ANY EVENT THE DISTRICT COURT HAD JURISDICTION TO DETERMINE ITS JURISDICTION

We have argued that the Norris-LaGuardia Act and the Clayton Act did not deprive the District Court of jurisdiction to grant the injunctive relief in this case. But, should this court now decide the contrary, the contempt judgments, for the reasons hereinafter discussed, are nevertheless valid.

This is a case of first impression. Whether the Norris-LaGuardia and Clayton Acts apply to a case such as this had never been judicially determined prior to the decision of the District Court in this case. Of necessity, therefore, the District Court in undertaking to decide that question was

exercising judicial power. Incident to the exercise of that judicial power and in order to protect that power to determine effectively the controversy between the parties to this case, the temporary restraining order was issued.

The temporary restraining order was served on the defendants, along with all other papers in the case, on November 18, 1946, about two and one-half days before the time set by defendants for the commencement of the strike. Admittedly, the defendants did not comply with the order. Nor did they move the court to vacate the restraining order. Rather the defendants themselves assumed to judge the validity of the order and to ignore it, until after they were cited for contempt. Such conduct was expressly condemned by this Court in *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450:

> If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the "judicial power of the United States" would be a mere mockery.

Upon ascertaining that substantially all bituminous coal production had ceased by the afternoon of November 21, 1946, the Government requested and the District Court issued a rule ad-

dressed to the defendants to show cause four days later why they should not be punished for contempt (R. 96). By the return day the defendants had neither complied with the restraining order nor sought to have it vacated. A week after the service of the restraining order, during which time substantial injury was inflicted on the people of the United States, the defendants for the first time moved to vacate the rule to show cause. It was only after a full trial, the entry of judgments for contempt, the imposition of sentences, the issuance of a preliminary injunction, and the filing of petitions for writs of certiorari in this Court by the United States, that the defendants, on December 7, 1946, nineteen days after service upon them of the restraining order, purported to comply with the directions of the court. The damage to the United States which resulted from the nineteen days of lost production of bituminous coal was very substantial.

The necessity for obedience to such temporary restraining orders has been recognized and punishment for contempt expressly sanctioned. *United States* v. *Shipp*, 203 U. S. 563; *Howat* v. *Kansas*, 258 U. S. 181; *Carter* v. *United States*, 135 F. (2d) 858 (C. C. A. 5); *Reid* v. *Independent Union of All Workers*, 200 Minn. 599; *Main Cleaners & Dyers, Inc.* v. *Columbia Super Cleaners, Inc.*, 332 Pa. 71.

United States v. *Shipp, supra*, arose on an original information for contempt of this Court. One Johnson, a Negro, had previously been sen-

tenced to death by a Tennessee state court for rape. A petition for a writ of habeas corpus had been filed with the Circuit Court and denied. An appeal to this Court had been allowed, and an order made staying all proceedings against Johnson pending the appeal. The information for contempt alleged that Shipp, the sheriff having custody of Johnson, had nevertheless withdrawn the customary guard from the jail and left only the night jailer in charge; that he and other defendants had conspired to break into the jail for the purpose of lynching Johnson, with intent to show contempt for the order of this Court, and for the purpose of preventing it from hearing the appeal; and that although he pretended to do his duty, he actually abetted the mob which took Johnson out of the jail and murdered him.

On the return to the order to show cause, Shipp and other defendants asserted that this Court was without jurisdiction to punish the contempt, because it had jurisdiction of the appeal only if a constitutional question were involved, and the evidence before the Circuit Court, if not the face of the petition for habeas corpus, showed that the alleged constitutional question was a pretense. Mr. Justice Holmes, in giving the opinion of the unanimous court rejecting the contention as to want of jurisdiction and ordering that the contempt be tried, stated (203 U. S. at 573):

We regard this argument as unsound. It has been held, it is true, that orders made by a court having no jurisdiction to make them may be disregarded without liability to process for contempt. *In re Sawyer,* 124 U. S. 200; *Ex parte Fisk,* 113 U. S. 713; *Ex parte Rowland,* 104 U. S. 604. But even if the Circuit Court had no jurisdiction to entertain Johnson's petition, and if this court had no jurisdiction of the appeal, this court, and this court alone, could decide that such was the law. It and it alone necessarily had jurisdiction to decide whether the case was properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. See *Mansfield, Coldwater & Lake Michigan Ry. Co.* v. *Swan,* 111 U. S. 379, 387. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition, just as the state court was bound to refrain from further proceedings until the same time. Rev. Stat. 766; act of March 3, 1893, c. 226, 27 Stat. 751. The fact that the petitioner was entitled to argue his case shows what needs no proof, that the law contemplates the possibility of a decision either way, and therefore must provide for it.

Applicable here is this Court's decision in *Howat* v. *Kansas, supra.* In that case writs of error to

the Supreme Court of Kansas sued out to test the validity under the Federal Constitution of a statute of Kansas creating a Court of Industrial Relations. The Act had created an administrative tribunal empowered to arbitrate controversies between employer and employees in mines and other industries affecting the public interest. The tribunal was empowered to make investigations and to call witnesses and to make determinations as to terms and conditions of employment. Orders of the Board were to be enforced by application to the Supreme Court of Kansas which had power of review. The Act forbade any injunction to restrain an employee from quitting his employment. It was directed against causing strikes. It had been preceded by a strike in the coal mines of Kansas a year before.

Howat and others had been subpoenaed before the Court of Industrial Relations and failed to appear. On application by the Court of Industrial Relations to a state district court, an order was issued directing Howat and others to attend and testify. This was disobeyed and on contempt proceedings Howat and others asserted that the legislation was void. They were committed to jail until they would comply with the subpoena. On appeal, the Supreme Court of the State affirmed, holding that without regard to the validity of the provisions of the Industrial Relations Act, they were under legal obligation to obey the subpoena and were in contempt for not doing so.

The Supreme Court found no error on this point.

The second writ of error involved a suit by the State of Kansas against Howat and others, members of local unions of the United Mine Workers of America, charging that they were threatening to call a general strike in the coal mines and would be endangering the peace and order in the communities in which those mines were located, with intent to violate the law of Kansas, particularly the Court of Industrial Relations Act, that they were intimidating miners and conspiring to stop the operation of railroads and of the State in the conduct of its governmental affairs and to cut off the supply of coal which would seriously affect and injure the welfare and health of the people. The defendants' answer was that they were exercising their lawful and constitutional rights and that the stoppage in the production of coal, if any, was merely the incidental effect of the exercise of their lawful rights. They further alleged that the Industrial Relations Act was void under the Federal Constitution. After trial the Court issued a permanent injunction, which among other things enjoined the defendants from causing the miners to quit their work at the mines but which did not enjoin any miner from quitting his employment. Proceedings were initiated later by the Attorney General charging a violation of the injunction. In those proceedings the defendants attacked the validity of the Industrial Court Act and of the permanent in-

junction and asserted they had done nothing unlawful. The Court found that the defendants had directed a strike at the mine, that a cessation of the work ensued, that this was done wilfully in disobedience of the injunction, and sentenced the defendants to imprisonment for a year.

The Supreme Court of Kansas held on appeal that the district court, a state court of general jurisdiction, had general power to issue injunctions in equity and even if its exercise of the power was erroneous, the injunction was not void and that aside from the Industrial Relations Act the state district court had power to issue injunctions in abatement of public nuisances. The court relied on the case of *In re Debs, supra.* This Court said, at page 189:

> An injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them however erroneous the action of the court may be, even if the error be in the assumption of the validity of a seeming but void law going to the merits of the case. It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them

is contempt of its lawful authority, to be punished. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 450; *Toy Toy* v. *Hopkins*, 212 U. S. 542, 548. See also *United States* v. *Shipp*, 203 U. S. 563, 573.

In *Carter* v. *United States, supra*, the Circuit Court of Appeals for the Fifth Circuit applied the *Shipp* case in a situation far less important to the public than that presented in this case. There, the district court had issued a restraining order against certain labor unions and union officials and had punished one such official for disobedience. The Circuit Court of Appeals upheld the contempt conviction although it decided (in a contemporaneous appeal—*Brown* v. *Coumanis*, 135 F. (2d) 163) that the case involved a labor dispute under the Norris-LaGuardia Act and that therefore the district court lacked jurisdiction in the basic action to have issued a restraining order. Rejecting the argument that since the restraining order was beyond the court's jurisdiction it could form no basis for contempt proceedings, the court said:

> It cannot now be broadly asserted that a judgment is always a nullity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. *Treines* v. *Sunshine*

Mining Co., 308 U. S. 66, 60 S. Ct. 44, 84 L. Ed. 85; *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 403, 60 S. Ct. 907, 84 L. Ed. 1263; *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 104. So in the matter of federal jurisdiction, which is often a close question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States. See *Binderup* v. *Pathe Exchange*, 263 U. S. 291, at page 305, 44 S. Ct. 96, 68 L. Ed. 308." (p. 861.)

The court then discussed *United States* v. *Shipp*, *supra*, and stated that that case applied directly to the action of the District Court, pointing out that the District Court

> had a new question of jurisdiction to solve. It alone had authority in the first instance to decide whether or not the case arose under the Norris-LaGuardia Act, 29 U. S. C. A. §§ 101–115, a law of the United States. It could lawfully by a temporary injunction preserve the business which was the subject of the litigation until a hearing could be had. The order was not final. It deprived Carter of no right. It only required that he refrain from interfering with another man for a few days. Carter did not elect to move to dissolve the order, but to flout and disobey it. The order was, while it lasted, a lawful one, such as a district court of the United States in the exer-

cise of its equity powers could make, pending a hearing of a doubtful question of jurisdiction. The question of jurisdiction was not frivolous. It had never before been decided. (p. 862.)[24]

Upon the principles enunciated in the above cases, which we believe are essential to the administration of justice, the contempt judgments are valid in any event since the District Court had the power to decide a case of first impression properly before it. That court's power to adjudicate the defendants in contempt for their failure to comply with the restraining order is not affected by any determination of the question whether the Norris-LaGuardia and Clayton Acts apply to this case. At best that was only an arguable contention which posed an issue for decision by the court.

IV

THE CONSTITUTIONAL RIGHTS OF THE DEFENDANTS WERE FULLY PROTECTED

1. *The proceedings preliminary to the contempt trial were correct, the defendants fully realized prior to the trial that they were charged with both civil and criminal contempt, the civil and criminal contempts were properly tried in a single proceeding.*

The procedure by which the contempt proceedings were instituted—petition for rule to show

[24] See also *Stoll* v. *Gottlieb*, 305 U. S. 165, 171–2; cf. *Jones* v. *Securities & Exchange Commission*, 298 U. S. 1, 17–18.

cause,[25] supporting affidavit,[26] and rule to show cause—was in accordance with the approved practice in criminal contempt proceedings. *Forrest* v. *United States*, 277 Fed. 873 (C. C. A. 9); *United States* v. *Lederer*, 140 F. 2d 136 (C. C. A. 7); *In re Meckley*, 137 F. 2d 3[illegible] (C. C. A. 3); *United States* v. *Balaban*, 26 F. Supp. 491 (D. C. N. D. Ill.); see *Gompers* v. *United States*, 233 U. S. 604.[27]

Rule 42 of the Federal Rules of Criminal Procedure provides that a criminal contempt not com-

[25] An unverified petition for rule to show cause alleging contempt on information and belief is proper. *Laughlin* v. *United States*, 151 F. 2d 281, 284 (App. D. C.); *National Labor Relations Board* v. *Red River Lumber Co.*, 109 F. 2d 157, 160 (App. D. C.); *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. 2d 964 (App. D. C.); *Conley* v. *United States*, 59 F. 2d 929 (C. C. A. 8).

[26] A supporting affidavit made on information and belief is proper. In fact, no affidavit at all is necessary. *In re Fletcher*, 107 F. 2d 666, 668 (App. D. C.); *Bowles* v. *United States*, 50 F. 2d 848 (C. C. A. 4); *Kelly* v. *United States*, 250 Fed. 947 (C. C. A. 9).

[27] An indictment or information is not necessary for the trial of criminal contempt. *Jennings* v. *United States*, 264 Fed. 399, 405 (C. C. A. 8). The provisions of the Clayton Act prescribing proceedings for criminal contempt in certain cases (Act of October 15, 1914, 38 Stat. 738, 28 U. S. C. 387) are not applicable here, since these contempts consisted of disobedience of an order entered in a suit brought by the United States (Act of October 15, 1914, 38 Stat. 739, 28 U. S. C. 389). *Hill* v. *United States ex rel Weiner*, 300 U. S. 105; *United States* v. *Goldman*, 277 U. S. 229; *Forrest* v. *United States*, 277 Fed. 873 (C. C. A. 9). It should be observed, however, that the procedure followed in the instant case for instituting the contempt proceedings met all the requirements of the Clayton and Norris-LaGuardia Acts.

mitted in the actual presence of the court shall be prosecuted on a "notice" which "shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and describe it as such."

Although the petition for a rule to show cause did not in terms describe defendants' contempts as "criminal" it did allege that defendants had "wilfully, wrongfully, and deliberately disobeyed and violated" the temporary restraining order (R. 66); the memorandum of points and authorities in support of the petition, which was served on defendants (R. 71), cited and discussed criminal contempt cases as applicable precedents (R. 70); and the facts stated in the supporting affidavit clearly constituted both civil and criminal contempt. The defendants' motion to vacate the rule to show cause, which they served prior to the trial, characterized the proceedings as one for criminal contempt (R. 82). The points and authorities of the defendants submitted in support of that motion, which they also served before the trial, expressly stated that this was a proceeding for criminal contempt (R. 84). Counsel for defendants stated to the court prior to the trial that this was a criminal contempt proceeding (R. 192, 194). Counsel for the Government stated to the court prior to the commencement of trial, and in the presence of defendants, that this was both a civil and criminal contempt proceeding (R. 196, 198). Manifestly, de-

fendants fully understood that they were charged with criminal contempt. The District Court correctly found that, if there was any error because of the failure of the petition specifically to describe the contempt as having a criminal aspect, it was harmless in view of the fact that the defendants, before the trial, were given ample notice of the charge (R. 97, 204).[28]

Moreover, there was no reason why the criminal contempt, which consisted of the same acts as the civil contempt, should not have been tried in the same proceeding, as long as defendants were afforded in it, as they were, those features of criminal procedure to which they were entitled. This practice has been followed even where the main equity suit was brought by a private litigant. See

[28] Pleadings in criminal contempt cases need not meet the standards applicable to criminal prosecutions. All that was required was that respondents be informed of the charge against them and that they be given a reasonable opportunity to make their defense. *Woodside* v. *United States*, 60 F. (2d) 823 (C. C. A. 4); *Fanning* v. *United States*, 72 F. (2d) 929 (C. C. A. 4); *Armstrong* v. *United States*, 18 F. (2d) 371 (C. C. A. 7); *National Labor Relations Board* v. *Arcade-Sunshine Co.*, 122 F. (2d) 964 (App. D. C.); *Conley* v. *United States*, 59 F. (2d) 929, 935 (C. C. A. 8). The due process clause of the Fifth Amendment required no more than this. *Blackmer* v. *United States*, 284 U. S. 421, 440. Those requirements were fully complied with in these proceedings. (R. 73, 205.) Defendants' counsel conceded that they had been informed of plaintiff's contentions and had full opportunity to meet them (R. 267).

Nye v. *United States*, 313 U. S. 33; *In re Merchants' Stock and Grain Company et al. Petitioners*, 223 U. S. 639; *Matter of Christiansen Engineering Company*, 194 U. S. 458; *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324; *New Orleans* v. *New York Mail Steamship Co.*, 20 Wall. 387.[29]

The concept of criminal contempt proceedings as separate from the main equity suit was originally developed to resolve questions as to the reviewability of such contempt orders by this Court and by the Circuit Court of Appeals. See the *Bessette* case, *supra*. Of course no such question is involved in the present case. A civil and a criminal contempt may be tried in a single proceeding and punished by a fine imposed in a single order. Cf. *Union Tool Company* v. *Wilson*, 259 U. S. 107.

Defendants' objection that the contempt proceedings were not independent of the equity suit actually is that the contempt proceedings should have proceeded exactly as they did, with the sole difference that the pleadings should have borne some other number. Such a nonprejudicial error, if any, would not justify reversal of a criminal

[29] That the criminal contempt proceedings were pleaded and tried as a part of the main equity suit in the *Christiansen*, *Bessette*, and *New Orleans* cases does not appear from the Court's opinions, but is disclosed by the records in these cases. See *Christiansen* case, Brief in behalf of respondent, pp. 2, 11, 14; *Bessette* record, Certificate of the Circuit Court of Appeals for the Seventh Circuit, p. 2, Appellant's Brief, p. 16, Appellee's Brief, p. 2; *New Orleans* Record, pp. 1, 12, 58.

conviction, *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150; *United States* v. *Ragen*, 314 U. S. 513; *United States* v. *Trenton Potteries*, 273 U. S. 392; *Segurola* v. *United States*, 275 U. S. 106.

2. *The defendants were accorded and exercised fully the right of cross examination of the witnesses in the contempt trial, all of whom were produced by the Government.*

At the contempt trial there were eight witnesses produced by the Government. The defendants were advised in advance of the names and identities of each of the Government's proposed witnesses (R. 241). The Government did not call as a witness either the individual defendant or any officer, agent or representative of the defendant Union. The defendants were afforded the opportunity to cross examine each of the Government's witnesses and exercised that right as to two of the witnesses. The defendants were in no way limited in the full exercise of the right of cross examination.

3. *The defendants raised no issue of fact, did not seek a jury trial, did not object to trial by the Court alone and were not entitled to a jury trial.*

The rule to show cause provided that unless waived by them the defendants would be tried for the contempt by the court with an advisory jury (R. 73). Upon the return day of the rule to show cause, the defendants and each of them made a

return. In their return the defendants admitted their failure to comply with the restraining order but denied the jurisdiction of the court to have issued that order and the rule to show cause (R. 503). At no time did the defendants produce evidence to raise any issue of fact—indeed, the subsequent trial for contempt was had only because the defendants although not disputing the facts later interposed a plea of not guilty to the charges. It is to be noted, moreover, that the defendants waived the advisory jury which had been tendered to them on the ground that the questions involved here were primarily questions of law and that the defendants desired to expedite the case and reach a quick resolution of the issues involved (R. 205). The defendants at no time requested a trial by jury nor did they at any time make an objection to trial by the court alone (R. 205).

Finally, the defendants would have been entitled to a trial by jury of any issues of fact only if Section 11 of the Norris La-Guardia Act were applicable to the instant contempt proceeding and if this case arose under that Act. For neither the well-settled rules of equity procedure in contempt cases nor the Clayton Act accord them any such right.[30] That the Norris-LaGuardia Act is

[30] *Ex parte Terry*, 128 U. S. 289; *Eilenbecker* v. *Plymouth County*, 134 U. S. 31; *Gompers* v. *United States*, 233 U. S. 604, 610. The sections of the Clayton Act providing for jury trial, upon demand, in certain contempt cases (Act of October 15, 1914, 38 Stat. 738, 28 U. S. C. 387) are not ap-

inapplicable to a case such as this has been previously demonstrated.

4. *The defendants were proven guilty of the contempts beyond a reasonable doubt.*

The District Court in its judgment and findings concluded that the guilt of each of the defendants of the charges of contempt had been established by the Government beyond any reasonable doubt (R. 99). There is more than ample evidence in the record to support this finding. There is neither testimony nor documentary evidence to the contrary.

It is expected that the defendant union will contend that it should not be held responsible because the requirements of proof contained in Sec. 6 of the Norris-LaGuardia Act have not been met. Such a contention has no merit. It overlooks the fact that no agency is involved since the wrongful act here, namely, contempt of court, was the failure of the union *itself* to comply with a duty imposed upon it by a court of the United States. Cf. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344. The union's ability to have complied with the court's direction, whether through the defendant Lewis or through some other officer or agent of the union, cannot be denied. And the

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plicable here, since these contempts consisted of disobedience of an order entered in a suit brought by the United States (Act of October 15, 1914, 38 Stat. 739, 28 U. S. C. 389): *Hill* v. *United States ex rel Wein*[illegible], 300 U. S. 105; *United States* v. *Goldman*, 277 U. S. 229; *Forrest* v. *United States*, 277 Fed. 873 (C. C. A. 9).

record amply establishes that the union as such had knowledge of the restraining order (R. 63–64, 500–501, 503).

5. *The fines were properly imposed on each defendant and were not excessive.*

The fine of $10,000 imposed upon defendant Lewis (R. 101) and the fine of $3,500,000 imposed upon defendant United Mine Workers (R. 102) were appropriate under the circumstances of this case and come well within the sound judicial discretion of the District Court. *Huffman* v. *United States,* 148 F. 2d 943 (C. C. A. 10th); *United States* v. *Lederer,* 140 F. 2d 136 (C. C. A. 7th); *In re Independent Publishing Co.,* 240 Fed. 849 (C. C. A. 9th).

There is no evidence that the fines are beyond the ability of defendants to pay, or take an undue proportion of the assets of the defendants. *Moore* v. *United States,* 150 F. 2d 323, 325 (C. C. A. 10th). Defendants' counsel, although protesting the fines as excessive, made no effort to show that they were beyond defendants' reasonable capacity to pay them (R. 321–326).

Defendant Lewis as president of defendant United Mine Workers has an annual salary of $25,000, and the latter's constitution provides that he shall receive, in addition to his salary, "such additional sums for additional service rendered as may be authorized and approved" by himself as president (R. 321, 327, 515, 523). The record shows that this defendant posted

$10,000 in the District Court promptly after imposition of sentence (R. 512).

The amount of the fine imposed on defendant United Mine Workers, $3,500,000 was about a quarter of the substantial *cash* assets of that defendant, which exceeded $13,000,000 (R. 321). The amount of the fine was immediately forthcoming (R. 513). It is in no position to complain of the fine as a violation of the Eighth Amendment or otherwise. Cf. *Badders* v. *United States*, 240 U. S. 391, 394; *Ebeling* v. *Morgan*, 237 U. S. 625; *Walsh* v. *Gurman*, 132 Conn. 58, 42 Atl. 2d 362; *Lapinski* v. *Copacino*, 131 Conn. 119, 38 Atl. 2d 592. And see *Gulf, Colorado & Santa Fe Railway Company* v. *Texas*, 246 U. S. 58, 62.

The fines were imposed after findings that defendants had committed both civil and criminal contempt (R. 101, 102). Compare *Gompers* v. *Bucks Stove & Range Company*, 221 U. S. 418, with *Gompers* v. *United States*, 233 U. S. 604. *Union Tool Co.* v. *Wilson*, 259 U. S. 107; *Lamb* v. *Cramer*, 285 U. S. 217; *Nye* v. *United States*, 313 U. S. 33. These fines are not excessive for either the civil contempt alone or the criminal contempt alone. As to civil contempt, the fines are measurable by the amount of damages caused by the contemptuous conduct. *Leman* v. *Krentler-Arnold Hinge Last Co.*, 284 U. S. 448, 455; *Lamb* v. *Cramer*, 285 U. S. 217; *Parker* v. *United States*, 126 F. 2d 370 (C. C. A. 1st); *National Labor Relations Board* v. *Remington Rand, Inc.*, 130 F.

2d 919 (C. C. A. 2d); *Raymor Ballroom Co.* v. *Buck*, 110 F. 2d 207 (C. C. A. 1st). The fines here were, in all probability, far less than the pecuniary loss to the United States from reduced tax collections alone (R. 98, 294, 297).[21]

The fines were not excessive within the meaning of the Eighth Amendment. It cannot be said that, under all the circumstances, the court abused its sound discretion. *Hill* v. *United States ex rel Weiner*, 300 U. S. 105; and see *United States* v. *Goldman*, 277 U. S. 229; *Huffman* v. *United States*, 148 F. 2d 943 (C. C. A. 10th); *United States* v. *Lederer*, 140 F. 2d 136 (C. C. A. 7th); *In re Independent Publishing Co.*, 240 Fed. 849 (C. C. A. 9th). In view of the wilfullness and aggravated characte of the contempt and its continuance, of the great injury caused and threatened by defendants' contemptuous acts, and of their financial resources, the amounts of these fines are not disproportionate to the offenses. *United States* v. *Lederer*, 140 F. 2d 136 (C. C. A. 7th). See *Howard* v. *Fleming*, 191 U. S. 126, 135.

6. *The defendants' rights to freedom from involuntary servitude and to freedom of speech were fully protected.*

A brief résumé of the facts will be useful in connection with any contention that the defend-

[21] The United States, as a civil litigant, is entitled to the compensatory relief afforded by a fine for civil contempt. *McCrone* v. *United States*, 307 U. S. 61; *Parker* v. *United States*, 135 F. 2d 54 (C. C. A. 1st).

ants were subjected to involuntary servitude or were denied freedom of speech. The restraining order for the violation of which the defendants have been found in contempt was served on November 18, 1946. It commanded two types of action. The first command was that the defendants withdraw the notice of alleged termination of the contract which was in fact a strike call effective November 20, 1946. The second command of the restraining order was that the defendants refrain from specified actions, such as, that they refrain from issuing or otherwise giving publicity to any notice that the Krug-Lewis agreement had been, was, or would be terminated. The defendants, in this portion of the restraining order, were also prohibited from instigating or encouraging the mine workers to interfere by strike with the operation of the mines (R. 60).

The return of the defendants admitted, as the evidence showed, that subsequent to the receipt of the restraining order the defendants did nothing with respect to rescinding or recalling the strike call. The return stated that at all times after the restraining order the status of the notice of termination remained the same (R. 96). And until December 6, 1946, after this matter had been brought to this Court, the defendants did nothing.

The failure of the defendants to comply with the court's direction to withdraw the strike notice resulted in the strike being consummated on No-

vember 21, 1946, as scheduled. The contempt proceeding was initiated by rule to show cause obtained at about 2:00 p. m. on November 21, 1946, and after trial resulted in conviction of contempt for the defendants' admitted failure to act.

The contempt convictions therefore raise only the question whether the failure of defendants to perform affirmative action directed by the District Court constituted contempt. Those proceedings did not involve the violation of the prohibitory provisions of the restraining order.[52]

The direction to the defendants to withdraw the notice to strike no more created involuntary servitude or violated freedom of speech than would a direction by the court to the defendants to ring a bell or flash a light as a signal to the miners to return to work.[53] The power of a court to direct

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[52] The preliminary injunction which issued after the conclusion of the contempt proceedings was similar in form to the restraining order which was the basis of the contempt proceedings (R. 60, 102).

[53] Both the War Labor Disputes Act and the restraining orders issued by the District Court recognize the distinction between prohibiting the instigation of a strike and compelling any individual to perform involuntary service. The War Labor Disputes Act, in Section 6 (a), makes it unlaw-

such affirmative action was clearly stated in the *Virginian Railway* case, *supra*. There an employer was directed by the District Court affirmatively to bargain collectively. Mr. Justice Stone, speaking for a unanimous Court, said (pp. 549–550):

> Petitioner contends that if the statute is interpreted as requiring the employer to negotiate with the representative of his employees, its obligation is not the appropriate subject of a decree in equity; that negotiation depends on desires and mental attitudes which are beyond judicial control, and that since equity cannot compel the parties to agree, it will not

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ful to instigate or aid a strike against a mine or facility which has been seized by the Government, but it provides, however, that "no individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment." Similarly, the District Court's restraining order, while it precluded the instigation or inducement of a strike by the defendants, did not preclude any individual from ceasing his employment. See in this connection R. 169 *et seq.* Moreover, these defendants have no standing to complain of a violation, if any, of the constitutional rights of some other person to be free from involuntary servitude, since that right is purely personal. The *Slaughterhouse* cases, 83 U. S. 36, 69; *United States* v. *White*, 322 U. S. 694.

compel them to take the preliminary steps which may result in agreement.

There is no want of capacity in the court to direct complete performance of the entire obligation: both the negative duties not to maintain a company union and not to negotiate with any representative of the employees other than respondent and *the affirmative* duty to treat with respondent. Full performance of both is commanded by the decree in terms which leave in no uncertainty the requisites of performance. In compelling compliance with either duty it does far less than has been done in compelling the discharge of a contractual or statutory obligation calling for a construction or engineering enterprise. *New Orleans, M. & T. Ry. Co.* v. *Mississippi,* 112 U. S. 12; *Wheeling Traction Co.* v. *Board of Commissioners,* 248 Fed. 205; see *Gas Securities Co.* v. *Antero & Lost Park Reservoir Co.,* 259 Fed. 423, 433. *Board of Commissioners* v. *A. V. Wills & Sons,* 236 Fed. 362, 380; *Jones* v. *Parker,* 163 Mass. 564; 40 N. E. 1044, or in granting specific performance of a contract for the joint use of a railroad bridge and terminals, *Joy* v. *St. Louis,* 138 U. S. 1; *Union Pacific Ry. Co.* v. *Chicago, R. I. & P. Ry. Co.,* 163 U. S. 564; cf. *Prospect Park & Coney Island R. Co.* v. *Coney Island & Brooklyn R. Co.,* 144 N. Y. 152; 39 N. E. 17.

This Court, in passing, also pointed out that Section 9 of the Norris-LaGuardia Act, which provides

that a restraining order or injunction "shall include only a *prohibition* of such specific act or acts as may be expressly complained of" in the complaint, does not preclude a mandatory injunction and stated (pp. 562–563):

> The evident purpose of this section, as its history and context show, was not to preclude mandatory injunctions, but to forbid blanket injunctions against labor unions, which are usually prohibitory in form, and to confine the injunction to the particular acts complained of and found by the court.

In *Toledo Railway Co.* v. *Pennsylvania Co.*, 54 Fed. 730 (C. C. N. D. Ohio) there had been negotiations between the railway and Arthur, the Chief Executive of the Brotherhood of Locomotive Engineers. After these had broken down, Arthur issued an order to the employees of the railway to strike, and all other members of the brotherhood not to haul freight issuing from the struck railroad. The railway obtained a temporary restraining order against Arthur, directing him "to rescind any order he might have promulgated to the engineers on connecting lines to refuse to handle complainant's freight." On a later motion for an injunction to restrain Arthur "from issuing, promulgating, or continuing in force" the strike notice then, Judge Taft held that a mandatory injunction was proper where necessary to maintain the *status quo* and,

therefore, both the temporary restraining order and the preliminary injunction could properly be issued, compelling Arthur to rescind his order. In so holding Judge Taft pointed out:

> The office of a preliminary injunction is to preserve the status quo until, upon final hearing, the court may grant full relief. Generally this can be accomplished by an injunction prohibitory in form, but it sometimes happens that the status quo is a condition not of rest, but of action, and the condition of rest is exactly what will inflict the irreparable injury upon complainant, which he appeals to a court of equity to protect him from. In such a case courts of equity issue mandatory writs before the case is heard on its merits (citing cases).
>
> It is the duty of the court promptly to prevent, at all hazards, the probable obstruction to its main injunction, by auxiliary injunctive process, and, if such obstruction has actually been interposed, to remove it by the same means. On this ground the court was fully justified in restraining Arthur, as it did, from continuing in force any order he might have issued in conflict with the previous order of the court. This was mandatory, but it was necessary to secure the enforcement of the court's previous order, and to preserve the status quo. Had the order of Arthur, then in force, been allowed to continue, future equitable relief would have been un-

availing. A rescission of the order could work injury to no one. Mandatory injunctions issue under such circumstances. Mr. High states the rule as follows, in his work on Injunctions (section 2):

> "And when there is willful and unlawful invasion of plaintiff's right, against his protest and remonstrance, the injury being a continuing one, a mandatory injunction may issue in the first instance." (54 Fed. at 745)

The *Toledo* case has been cited with approval by this Court. In *Peoria Railway Co.* v. *United States,* 263 U. S. 528, Mr. Justice Brandeis, writing for the court, relied on the authority of the *Toledo* case in pointing out that the courts can compel the performance of a duty by a mandatory injunction:

> The switching order here in question compels performance of the primary duty to receive and transport cars of a connecting carrier. That courts may enforce such duties by mandatory injunction, including a preliminary restraining order, has long been recognized. (263 U. S. at 535.)

Also apposite is *Vaughn* v. *Winston,* 83 F. (2d) 370 (C. C. A. 10). In that case the plaintiff, Winston, had a contract with the Ohio Textbook Commission to furnish books. Defendant Vaughn, State Superintendent of Public Instruction, had written a letter to various school authorities in which he had stated that in his

opinion the contract was illegal and that the school authorities were not bound to use plaintiff's books. The District Court, as part of the relief, ordered Vaughn to send out another letter recalling his prior one. The Circuit Court of Appeals affirmed this part of the order, stating:

> The case presented is one where a continuing wrong can be stopped only by an affirmative act. In order to restore the status as it existed before Vaughn invaded the rights of appellee, affirmative action must be taken.
>
> The power of equity, in an injunctive action, to issue an order requiring affirmative action is frequently and properly exercised. * * * The order of the trial court is couched in the form of a double negative, a circumstance to which we attach no importance. If the court is without power in a particular case to require the doing of an affirmative act, it does not acquire that power by the form of words in which the command is couched.
>
> The order requiring Vaughn to send out letters to correct the untrue statements made in his earlier letters is justified on several distinct grounds: (1) It is the only appropriate means of rectifying the wrong done. (2) It was necessary to restore the status existing before Vaughn invaded ap-

pellee's rights. (3) Equity having jurisdiction to issue the prohibitory injunction, it had power to do all other things necessary to accomplish complete justice, for equity does not do things piecemeal. (83 F. 2d at 374.) See also *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1; *Ickes* v. *Virginia-Colorado Development Corp.*, 295 U. S. 639.

Not only is it clear, in view of the above cases, that a court may direct affirmative action such as that directed here, but it is well settled that the essential operations of Government, such as the administration of justice, may warrant a court in compelling a person to speak, if self-incrimination or privilege is not involved, even though the person would prefer to remain silent. *Blair* v. *United States*, 250 U. S. 273; *Howat* v. *Kansas*, 258 U. S. 181. It is also clear from these cases that the belief of a person that a statute or an order of the court under it, pursuant to which he is required to testify, may be unconstitutional, and that the court is without jurisdiction, constitutes no defense to a contempt proceeding based upon refusal to testify. Cf. *United States* v. *Kapp*, 302 U. S. 214, 218.

But apart from this, there can be no serious question that both the mandatory and prohibitory directions were constitutionally made. The

danger to the life of the community from the failure of the defendants to withdraw the strike notice and from their instigation of a strike, as overwhelmingly proved, met the most rigid test of "clear and present danger." *Schenck* v. *United States*, 249 U. S. 47; *Milk Wagon Drivers Union* v. *Meadowmoor Dairies, Inc.*, 312 U. S. 287. Cf. *Bridges* v. *California*, 312 U. S. 252; *Board of Education* v. *Barnette*, 319 U. S. 624; *Thomas* v. *Collins*, 323 U. S. 516.

CONCLUSION

This case does not infringe upon the guarantees given by the Constitution and the statutes of the United States. The general application of the Norris-LaGuardia Act to ordinary conflicts between private employers and employees is not challenged. The Government is not seeking to establish any principle which would interfere with the rights of labor.

The Government does seek, however, to uphold its right and authority to operate facilities the possession of which it has taken for war purposes under a temporary [34] wartime statutory authorization. The Government seeks as well to vindicate the power of the Federal Judiciary by the issuance of a temporary restraining order to prevent irreparable injury to the people of the nation, to prohibit interference with the sovereign functions of the United States, and to protect the jurisdiction

[34] See Proclamation of the President proclaiming cessation of hostilities as of December 31, 1946 (12 Fed. Reg. 1).

of the courts to decide questions of law and fact pending final judicial determination.

The convictions and judgments of contempt and the preliminary injunction were in all respects lawful and proper and should be affirmed.

Respectfully submitted,

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APPENDIX "A"

Constitutional Provisions, Statutes, and Executive Order 9728

1. Article III of the Constitution provides, in part, as follows:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
>
> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. Judicial Code, Section 24 (1), as amended, 28 U. S. C. 41 (1), provides in part as follows:

The district courts shall have original jurisdiction as follows:

First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue. * * *.

3. The Federal Declaratory Judgment Act, Act of June 14, 1934, c. 512, 48 Stat. 955, as amended by the Act of August 30, 1935, c. 829, Sec. 405, 49 Stat. 1027, 28 U. S. C. 400, Judicial Code, Section 274d, provides as follows:

(1) In cases of actual controversy (except with respect to Federal taxes) the courts of the United States shall have power upon petition, declaration, complaint, or other appropriate pleadings to declare rights and other legal relations of any interested party petitioning for such declaration, whether or not further relief is or could be prayed, and such declaration shall have the force and effect of a final judgment or decree and be reviewable as such.

(2) Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party, whose rights have been adjudicated by the declaration, to show cause why further relief should not be granted forthwith.

(3) When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the

court, whether a general verdict be required or not.

4. The War Labor Disputes Act (Act of June 25, 1943, c. 144, 57 Stat. 163, 50 U. S. C. App. (Supp. V), 1501–1511) provides as follows:

AN ACT, Relating to the use and operation by the United States of certain plants, mines, and facilities in the prosecution of the war, and preventing strikes, lockouts, and stoppages of production, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "War Labor Disputes Act."

DEFINITIONS

SEC. 2. As used in this Act—

(a) The term "person" means an individual, partnership, association, corporation, business trust, or any organized group of persons.

(b) The term "war contract" means—

(1) a contract with the United States entered into on behalf of the United States by an officer or employee of the Department of War, the Department of the Navy, or the United States Maritime Commission;

(2) a contract with the United States entered into by the United States pursuant to an Act entitled "An Act to promote the defense of the United States";

(3) a contract, whether or not with the United States, for the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of—

(A) any weapon, munition, aircraft, vessel, or boat;

(B) any building, structure or facility;

(C) any machinery, tool, material, supply, article, or commodity; or

(D) any component material or part of or equipment for any article described in subparagraph (A), (B), or (C);

the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining, or transportation of which by the contractor in question is found by the President as being contracted for in the prosecution of the war.

(c) The term "war contractor" means the person producing, manufacturing, constructing, reconstructing, installing, maintaining, storing, repairing, mining, or transporting under a war contract or a person whose plant, mine, or facility is equipped for the manufacture, production, or mining of any articles or materials which may be required in the prosecution of the war or which may be useful in connection therewith; but such term shall not include a carrier, as defined in title I of the Railway Labor Act, or a carrier by air subject to title II of such Act.

(d) The terms "employer", "employee", "representative", "labor organization", and "labor dispute" shall have the same meaning as in section 2 of the National Labor Relations Act.

POWER OF PRESIDENT TO TAKE POSSESSION OF PLANTS

SEC. 3. Section 9 of the Selective Training and Service Act of 1940 is hereby

amended by adding at the end thereof the following new paragraph:

"The power of the President under the foregoing provisions of this section to take immediate possession of any plant upon a failure to comply with any such provisions, and the authority granted by this section for the use and operation by the United States or in its interests of any plant of which possession is so taken, shall also apply as hereinafter provided to any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised with respect to any such plant, mine, or facility whenever the President finds, after investigation, and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort: *Provided*, That whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine, or facility shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency thereof prevailing prior to

the taking of possession thereof: *Provided further*, That possession of any plant, mine, or facility shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed."

TERMS OF EMPLOYMENT AT GOVERNMENT-OPERATED PLANTS

SEC. 4. Except as provided in section 5 hereof, in any case in which possession of any plant, mine, or facility has been or shall be hereafter taken under the authority granted by section 9 of the Selective Training and Service Act of 1940, as amended, such plant, mine, or facility, while so possessed, shall be operated under the terms and conditions of employment which were in effect at the time possession of such plant, mine, or facility was so taken.

APPLICATION TO WAR LABOR BOARD FOR CHANGE IN TERMS OF EMPLOYMENT AT GOVERNMENT-OPERATED PLANTS

SEC. 5. When possession of any plant, mine, or facility has been or shall be hereafter taken under authority of section 9 of the Selective Training and Service Act of 1940, as amended, the Government agency operating such plant, mine, or facility, or a majority of the employees of such plant, mine, or facility or their representatives,

may apply to the National War Labor Board for a change in wages or other terms or conditions of employment in such plant, mine, or facility. Upon receipt of any such application, and after such hearings and investigations as it deems necessary, such Board may order any changes in such wages, or other terms and conditions, which it deems to be fair and reasonable and not in conflict with any Act of Congress or any Executive order issued thereunder. Any such order of the Board shall, upon approval by the President, be complied with by the Government agency operating such plant, mine, or facility.

INTERFERENCE WITH GOVERNMENT OPERATION OF PLANTS

SEC. 6. (a) Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment.

(b) Any person who willfully violates any provision of this section shall be subject to a fine of not more than $5,000, or to imprisonment for not more than one year, or both.

FUNCTIONS AND DUTIES OF THE NATIONAL WAR LABOR BOARD

SEC. 7. (a) The National War Labor Board (hereinafter in this section called the "Board"), established by Executive Order Number 9017, dated January 12, 1942, in addition to all powers conferred on it by section 1 (a) of the Emergency Price Control Act of 1942, and by any Executive order or regulation issued under the provisions of the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation, and for other purposes," and by any other statute, shall have the following powers and duties:

(1) Whenever the United States Conciliation Service (hereinafter called the "Conciliation Service") certifies that a labor dispute exists which may lead to substantial interference with the war effort, and cannot be settled by collective bargaining or conciliation, to summon both parties to such dispute before it and conduct a public hearing on the merits of the dispute. If in the opinion of the Board a labor dispute has become so serious that it may lead to substantial interference with the war effort, the Board may take such action on its own motion. At such hearing both parties shall be given full notice and opportunity to be heard,

but the failure of either party to appear shall not deprive the Board of jurisdiction to proceed to a hearing and order.

(2) To decide the dispute, and provide by order the wages and hours and all other terms and conditions (customarily included in collective-bargaining agreements) governing the relations between the parties, which shall be in effect until further order of the Board. In making any such decision the Board shall conform to the provisions of the Fair Labor Standards Act of 1938, as amended; the National Labor Relations Act; the Emergency Price Control Act of 1942, as amended; and the Act of October 2, 1942, as amended, and all other applicable provisions of law; and where no other law is applicable the order of the Board shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to employer and employee under all the circumstances of the case.

(3) To require the attendance of witnesses and the production of such papers, documents, and records as may be material to its investigation of facts in any labor dispute, and to issue subpenas requiring such attendance or production.

(4) To apply to any Federal district court for an order requiring any person within its jurisdiction to obey a subpena issued by the Board; and jurisdiction is hereby conferred on any such court to issue such an order.

(b) The Board, by its Chairman, shall have power to issue subpenas requiring the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof. Such subpenas shall be enforceable in the same manner, and subject to the same penalties, as subpenas issued by the President under title III of the Second War Powers Act, approved March 27, 1942.

(c) No member of the Board shall be permitted to participate in any decision in which such member has a direct interest as an officer, employee, or representative of either party to the dispute.

(d) Subsections (a) (1) and (2) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(e) The Board shall not have any powers under this section with respect to any matter within the purview of the Railway Labor Act, as amended.

NOTICE OF THREATENED INTERRUPTIONS IN WAR PRODUCTION, ETC.

SEC. 8. (a) In order that the President may be apprised of labor disputes which threaten seriously to interrupt war production, and in order that employees may have an opportunity to express themselves, free from restraint or coercion, as to whether they will permit such interruptions in wartime—

(1) The representative of the employees of a war contractor, shall give

to the Secretary of Labor, the National War Labor Board, and the National Labor Relations Board, notice of any such labor dispute involving such contractor and employees, together with a statement of the issues giving rise thereto.

(2) For not less than thirty days after any notice under paragraph (1) is given, the contractor and his employees shall continue production under all the conditions which prevailed when such dispute arose, except as they may be modified by mutual agreement or by decision of the National War Labor Board.

(3) On the thirtieth day after notice under paragraph (1) is given by the representative of the employees, unless such dispute has been settled, the National Labor Relations Board shall forthwith take a secret ballot of the employees in the plant, plants, mine, mines, facility, facilities, bargaining unit, or bargaining units, as the case may be, with respect to which the dispute is applicable on the question whether they will permit any such interruption of war production. The National Labor Relations Board shall include on the ballot a concise statement of the major issues involved in the dispute and of the efforts being made and the facilities being utilized for the settlement of such dispute. The National Labor Relations Board shall by order forthwith certify the results of such balloting, and such results shall be open to public inspection. The National Labor Relations Board may provide for

preparing such ballot and distributing it to the employees at any time after such notice has been given.

(b) Subsection (a) shall not apply with respect to any plant, mine, or facility of which possession has been taken by the United States.

(c) Any person who is under a duty to perform any act required under subsection (a) and who willfully fails or refuses to perform such act shall be liable for damages resulting from such failure or refusal to any person injured thereby and to the United States if so injured. The district courts of the United States shall have jurisdiction to hear and determine any proceedings instituted pursuant to this subsection in the same manner and to the same extent as in the case of proceedings instituted under section 24 (14) of the Judicial Code.

POLITICAL CONTRIBUTIONS BY LABOR ORGANIZATIONS

SEC. 9. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251), is amended to read as follows:

"SEC. 313. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political office, or for any corporation whatever, or any labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or for any candidate,

political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' shall have the same meaning as under the National Labor Relations Act."

TERMINATION OF ACT

SEC. 10. Except as to offenses committed prior to such date, the provisions of this Act and the amendments made by this Act shall cease to be effective at the end of six months following the termination of hostilities in the present war, as proclaimed by the President, or upon the date (prior to the date of such proclamation) of the passage of a concurrent resolution of the two Houses of Congress stating that such provisions and amendments shall cease to be effective.

SEPARABILITY

SEC. 11. If any provision of this Act or of any amendment made by this Act, or the application of such provision to any person or circumstance, is held invalid, the remainder of the Act and of such amendments, and the application of such provision to other persons or circumstances, shall not be affected thereby.

5. The pertinent portion of Section 9 of the Selective Training and Service Act of 1940 (Act of September 16, 1940, 54 Stat. 885, 50 U. S. C. App. 301, *et seq.*) as amended by the War Labor Disputes Act, is set forth in Section 3 of the War Labor Disputes Act, set forth at pp. 85–87.

6. The Norris-LaGuardia Act, Act of March 23, 1932, c. 90, 47 Stat. 70, 29 U. S. C. 101–115, provides as follows:

> AN ACT To amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes.
>
> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.
>
> SEC. 2. In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are herein defined and limited, the public policy of the United States is hereby declared as follows:
>
> Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of con-

tract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the United States are hereby enacted.

SEC. 3. Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the United States, shall not be enforceable in any court of the United States and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to

join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SEC. 4. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrol-

ling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act.

SEC. 5. No court of the United States shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in section 4 of this Act.

SEC. 6. No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dis-

pute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: *Provided,*

however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such

undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SEC. 8. No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SEC. 9. No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein.

SEC. 10. Whenever any court of the United States shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the circuit court of appeals for its review. Upon the filing of such record in the circuit court of appeals, the appeal shall be heard and the temporary injunctive order affirmed,

modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SEC. 11. In all cases arising under this Act in which a person shall be charged with contempt in a court of the United States (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the contempt shall have been committed: *Provided,* That this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SEC. 12. The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the

same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

SEC. 14. If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

SEC. 15. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

7. Section 20 of the Clayton Act, Act of October 15, 1914, c. 323, Section 20, 38 Stat. 738, 29 U. S. C. 52, provides as follows:

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons,

whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

8. Executive Order No. 9728 provides as follows:

EXECUTIVE ORDER NO. 9728

AUTHORIZING THE SECRETARY OF THE INTERIOR TO TAKE POSSESSION OF AND TO OPERATE CERTAIN COAL MINES

WHEREAS after investigation, I find and proclaim that there are interruptions or threatened interruptions in the operation of the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances; that the coal produced by such mines is required for the war

effort and is indispensable for the continued operation of the national economy during the transition from war to peace; that the war effort will be unduly impeded or delayed by such interruptions; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency;

NOW, THEREFORE, by virtue of the power and authority vested in me by the Constitution and laws of the United States, including Section 9 of the Selective Training and Service Act of 1940 (54 Stat. 892) as amended by the War Labor Disputes Act (57 Stat. 163), as President of the United States and Commander-in-Chief of the Army and Navy of the United States, it is hereby ordered as follows:

1. The Secretary of the Interior is authorized and directed to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.

2. The Secretary of the Interior shall operate the said mines in accordance with such terms and conditions of employment as are in effect at the time possession thereof is taken, subject to the provisions

of Section 5 of the War Labor Disputes Act.

3. Subject to the national wage and price stabilization policies as determined by the National Wage Stabilization Board and the Economic Stabilization Director, the Secretary of the Interior is authorized, pursuant to the provisions of Section 5 of the War Labor Disputes Act, following such negotiations as he may deem necessary with the duly constituted representatives of the employees, to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government.

4. In carrying out this order, the Secretary of the Interior shall act through or with the aid of such public or private instrumentalities or persons as he may designate. All Federal agencies are directed to cooperate with the Secretary of the Interior to the fullest extent possible in carrying out the purposes of this order.

5. The Secretary of the Interior shall make employment available and provide protection to all employees working at such mines and to all persons seeking employment so far as they may be needed; and upon the request of the Secretary of the Interior, the Secretary of War shall take such action, if any, as he may deem necessary or desirable to provide protection to all such persons and mines.

6. The Secretary of the Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

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7. The Secretary of the Interior is authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances. He shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, provided that such concerted activities do not interfere with the operations of the mines.

8. Possession of any mine or mines taken under this order shall be terminated by the Secretary of the Interior as soon as practicable, but in no event more than sixty days after the restoration of the productive efficiency of any such mine or mines prevailing prior to the taking of possession thereof.

HARRY S. TRUMAN

THE WHITE HOUSE,

May 21, 1946.

APPENDIX "B"

Findings of Fact and Conclusions of Law

The findings of fact and conclusions of law of the District Court (R. 90–99) are set forth in full below. Record references have been added to the findings of fact.

FINDINGS OF FACT

1. On May 21, 1946, after investigation, the President of the United States found and proclaimed that there were interruptions or threatened interruptions in the operation of the mines producing bituminous coal as the result of existing and threatened strikes or other labor disturbances; that the coal produced by such mines was required for the war effort and was indispensable for the operation of the national economy during the transition of war to peace; that the war effort would be unduly impeded or delayed by such interruptions; and that the exercise, by the President, of the powers vested in him by the Constitution and Laws of the United States was necessary to insure the operation of such mines in the interest of the war effort and to preserve the national economic structure in the then existing emergency. [R. 2, 9–10, 207, 335–336.]

2. On May 21, 1946, the President of the United States, by virtue of the authority vested in him by the Constitution and laws of the United States, issued Executive Order 9728, whereby he author-

ized and directed the Secretary of the Interior to take possession of any and all bituminous coal mines the operations of which were then interrupted or threatened with interruption because of work stoppages, and, to the extent that he might deem necessary, of any real or personal property, franchises, rights, facilities, funds and other assets used in connection with the operation of such mines; to operate or arrange for the operation of such mines in such manner as he might deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines. [R. 2, 9–10, 207, 335–336.]

3. Pursuant to the provisions of said Executive Order 9728, the United States, through J. A. Krug, the Secretary of the Interior, on and after May 22, 1946, duly took possession of most of the bituminous coal mines of the nation. [R. 2, 208, 210, 336–342.] Since that time, the United States, through the Secretary of the Interior, has been and now remains in possession of such coal mines. [R. 2, 36, 211, 261, 289, 345–398, 486.]

4. As a consequence of negotiations authorized by the said Executive Order 9728, the Secretary of the Interior, as Coal Mines Administrator, on May 29, 1946, executed an agreement at Washington, D. C., with the defendant John L. Lewis, as President of the defendant Union (which agreement is hereinafter sometimes referred to as the Krug-Lewis Agreement). [R. 3, 10–15, 211, 399–403, 404.]

5. On May 29, 1946, the Secretary of the Interior, acting pursuant to the authority of the aforesaid Executive Order 9728 and section 5 of the War Labor Disputes Act, and in accordance with the provisions of the Krug-Lewis agreement, filed an application with the National Wage Stabilization Board for changes in wages and other terms and conditions of employment at the bituminous coal mines in Government possession. [R. 3, 211, 403.] The National Wage Stabilization Board thereupon, on May 31, 1946, issued its order, pursuant to Section 5 of the War Labor Disputes Act, approving changes in wages and other terms and conditions of employment agreed upon in the Krug-Lewis agreement and directed that they be put into effect at the said mines. Said order was approved by the President of the United States on May 31, 1946. [R. 3, 19–21, 211, 404–405.]

6. The Krug-Lewis agreement, by its terms, "covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession which were as of March 31, 1946, subject to the National Bituminous Coal Wage Agreement, dated April 11, 1945." [R. 10, 11, 211, 399.]

7. The defendant Lewis, on October 21, 1946, sent a letter to the Secretary of the Interior in which he stated that Section 15 of the National Bituminous Coal Wage Agreement, dated April 11, 1945, had been specifically carried forward into the Krug-Lewis agreement and that under that section, either party to the Krug-Lewis agreement might give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice; that the other party to the Krug-Lewis

agreement was thereupon required to attend said negotiating conference; and that at the end of fifteen days after the beginning of said negotiating conference, either party might give to the other, a notice in writing of the termination of the Krug-Lewis agreement, to be effective five days after the receipt of such notice. Acting pursuant to this interpretation of the Krug-Lewis agreement, the defendant Lewis notified the Secretary of the Interior that the defendant Union requested "a joint conference of the accredited representatives of the joint contracting parties to the Krug-Lewis agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices, differentials, inequalities and all other pertinent matters affecting or appertaining to the National Bituminous coal industry". [R. 4, 26–27, 217, 408–409.]

8. In reply thereto, on October 22, 1946, N. H. Collisson, Captain, USNR, as Coal Mines Administrator, acting for the Secretary of the Interior, sent a letter to the defendant Lewis in which the Coal Mines Administrator stated that the Krug-Lewis agreement had superseded Section 15 of the National Bituminous Coal Wage Agreement dated April 11, 1945; that the provisions of said Section 15 were no longer in effect; that, therefore, the Secretary of the Interior and the Coal Mines Administrator were unable to treat the defendant Lewis' letter of October 21, 1946, as a notice given pursuant to any existing contract provisions; and that the Coal Mines Administration considered the Krug-Lewis agreement in full force and effect; but that the Administration was ready to meet with the defendant Lewis "to discuss matters

affecting the operation of the bituminous coal mines under the Krug-Lewis agreement, and for that purpose, with the above reservations, any date for such discussions is agreeable to this Administration." [R. 4, 27–29, 217, 410–411.]

9. On the same day, the defendant Lewis sent a further letter to the Secretary of the Interior in which he reiterated his position and asserted that failure of the Secretary of the Interior to accede to his request would void the Krug-Lewis agreement. [R. 4–5, 29, 220, 412.]

10. On October 27, 1946, the Secretary of the Interior sent a telegram to the defendant Lewis requesting the defendant Lewis and (or) his representatives to meet with the Coal Mines Administrator and his associates on November 1 or any other date agreeable to the defendant Lewis. [R. 5, 29, 220, 412.][1]

12. In reply to the said telegram of October 27, 1946, the defendant Lewis, by a telegram of October 28, 1946, to the Secretary of the Interior, advised the Secretary of the Interior as follows:

"I ESTEEM YOUR TELEGRAM 27TH, RECEIVED BY ME TODAY, AS COMPLIANCE WITH REQUEST FOR OFFICIAL CONFERENCE CONTAINED BY LETTER 21 OCTOBER. I ACCORDINGLY ADVISE THAT REPRESENTATIVES UNITED MINE WORKERS WILL MEET WITH COAL MINES ADMINISTRATOR COLLISSON AND HIS ASSOCIATES AT 11 O'CLOCK A. M. ON FRIDAY, 1 NOVEMBER. UNDER THESE CONDITIONS KRUG-LEWIS AGREEMENT REMAINS EFFECTIVE AND UNCHANGED DURING PERIOD OF NEGOTIATION." [R. 5, 30, 220, 412–413.]

13. On November 1, 1946, a conference was held in Washington, D. C., attended

[1] There is no paragraph numbered 11 in the Findings of Fact made by the Court.

by representatives of the Secretary of the Interior and of the defendant Union, and that conference was thereafter continued from time to time, from November 1 to and including November 14, 1946, all without prejudice to the contentions of the respective parties regarding the right claimed by the defendants to terminate the Krug-Lewis agreement by unilateral notice. [R. 5, 221–223, 301, 302.] During the course of the meeting, on November 11, 1946, attended by the defendant Lewis and the Secretary of the Interior, among others, the representatives of the defendant Union for the first time advanced specific proposals for changes in the wages and other terms and conditions of employment in effect at the bituminous coal mines in the Government's possession, which proposals included changes of a substantial and far-reaching nature and which would involve an increase in the cost of production of coal at the mines of at least fifty cents a ton. [R. 5, 221–223, 237, 298–299, 305.]

14. Thereafter, on November 15, 1946, the defendant Lewis sent a letter to the Secretary of the Interior stating that "Fifteen days having now elapsed since the beginning of the above conference, the United Mine Workers of America, exercising its option, hereby terminate said Krug-Lewis agreement as of 12:00 o'clock p. m. midnight Wednesday, November 20, 1946." [R. 5–6, 34, 64, 223, 413.]

15. On the same day the Secretary of the Interior advised the defendant Lewis, by letter, "that you have no power under the Krug-Lewis agreement of May 29 or under the law, by unilateral declaration, to terminate the contract which by its terms 'covers for the period of Government possession

the terms and conditions of employment.'" [R. 6, 34–35.]

16. It has been for some years, and is now, as the defendants at all times well knew, the well-established policy of the defendant Union, consistently adhered to by its members, that the miners will not work in the absence of a contract, and that upon the declaration by the defendants that no contract exists, the miners cease work. No other stoppage order ever goes out. Such a declaration of "no contract" is in fact a call to strike. [R. 6, 37, 282–283, 483.]

17. The defendants sent out and distributed to the membership of the defendant Union [R. 284–286] a notice dated November 15, 1946, which read as follows [R. 284, 484]:

UNITED MINE WORKERS OF AMERICA

JOHN L. LEWIS
President

Metropolitan
0530

[SEAL]

UNITED MINE WORKERS' BUILDING
WASHINGTON 5, D. C.

NOVEMBER 15, 1946.

To the Members of the United Mine Workers of America:

Greetings:

The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:

"NOVEMBER 15, 1946.

Honorable J. A. KRUG,
Secretary of the Interior
Washington, D. C.

DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine Work-

ers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock P. M., midnight, Wednesday, November 20, 1946.

Yours truly,

UNITED MINE WORKERS OF AMERICA,
By JOHN L. LEWIS, *President.*"

The foregoing is for your official information.

Sincerely yours,

/s/ JOHN L. LEWIS,
President.

This notice was a cease work or strike notice. [R. 6, 37, 282–283, 483.]

18. The letters of November 15, 1946, from the defendants to the Secretary of the Interior, purporting to terminate the Krug-Lewis agreement as of November 20, 1946, was released by the defendants to, and published by, the public press on or about November 15 and 16, 1946. [R. 223, 279–282, 482 insert.]

19. Thereafter, on November 18, 1946, the United States of America by the Attorney General of the United States, brought a suit against the United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president of the United Mine Workers of America, under the Federal Declaratory Judgment Act (28 U. S. C.

Sec. 400) to obtain a declaration of rights and other legal relations, including a declaratory judgment or decree, an order for temporary injunctive relief, and such further relief as might be necessary or proper. [R. 1–51, 179–187.]

20. Upon the filing of the verified complaint, and upon plaintiff's application, this Court, on November 18, 1946, issued a temporary restraining order against the defendants, based upon the facts alleged in the complaint and upon affidavits filed in support of the application for the restraining order. The restraining order directed:

"* * * that the defendants and each of them and their agents, servants, employees and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this Court from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis to the Secretary of Interior dated November 15, 1946; and from issuing or otherwise giving publicity to any notice that or to the effect that the Krug-Lewis Agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines; and from breaching any of their obligations under said Krug-Lewis Agreement, and from coercing, instigating, inducing or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walkout, cessation of work, or otherwise, with the

operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device; and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728; and from taking any action which would interfere with this Court's jurisdiction or which would impair, obstruct, or render fruitless, the determination of this case by the Court." [R. 61.]

The restraining order by its terms provided that it would expire at 3:00 o'clock p. m. on November 27, 1946, unless extended. Plaintiff's motion for a preliminary injunction was set down for hearing on November 27, 1946, at 10:00 o'clock a. m. [R. 61, 507, 508.]

21. The defendants, and each of them, were duly and properly served at 2:15 p. m. on November 18, 1946, with a certified copy of the temporary restraining order, together with copies of the verified complaint, including and embracing plaintiff's prayer and motion for a temporary restraining order, and the supporting affidavits. [R. 61, 63–64.]

22. Following the service upon them of the Court's temporary restraining order, the defendants, as hereinafter more fully appears, have taken no action designed to withdraw the notice of alleged termination dated November 15, 1946, but, on the contrary, have wilfully, wrongfully, and deliberately permitted said notice to continue in effect. [R. 503–505, 313–314.] The defendants, and each of them, knew that, in accordance with their own established policy, if the notice of alleged termination

were not withdrawn and were permitted to continue in effect, a work stoppage at the mines would occur at midnight November 20, 1946. [R. 6, 37, 282–283, 483.] As a result of the foregoing, on or about November 18, 1946, there commenced at said coal mines a gradual walkout, strike, cessation of and refusal to work by the members of defendant Union, which increased daily until 12 o'clock midnight of November 20, 1946. [R. 67–68.] Since that hour and at all times thereafter there has been a walkout, strike, cessation of and refusal to work by substantially all of the members of the defendant Union employed at coal mines in the possession of the Government. [R. 289–290, 487.]

23. On November 21, 1946, the United States, by its Attorney General, filed a petition, supported by affidavits, for a rule to show cause why the defendants should not be punished as and for a contempt of this Court, alleging that the defendants, in defiance of the terms of said temporary restraining order, had wilfully, wrongfully and deliberately disobeyed said order. [R. 66–72.]

24. On said petition and affidavit, the Court on the same day issued a rule to show cause ordering said defendants to appear before this court on November 25, 1946, to show cause why they should not be punished as and for contempt of this court. It was further ordered that if upon the return of said defendants it should be found that the alleged contempt was not sufficiently purged, a trial should be held on November 27, 1946, and the defendants should, unless waived by them, be tried upon the charges of contempt by this

court with an advisory jury to be empaneled by the court. [R. 72-73.]

25. On the return day, the defendants, being represented by counsel [R. 501], and with the defendant John L. Lewis personally present in court [R. 313], made an oral return to the rule to show cause as follows:

"The defendants and each of them respectfully state to the Court that they and each of them, since the giving of said notice of November 15, 1946, since the issuance of Your Honor's temporary restraining order of November 18, have done no act nor spoken any word pertaining to said notice or in reference to permitting it to continue in effect.

"The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto.

"The defendants and each of them, Your Honor, therefore respectfully say to this Court that the situation with respect to such notice of November 15, 1946, for the reasons herein stated remains unchanged.

"The defendants and each of them respectfully deny the jurisdiction of this Honorable Court to have issued the temporary restraining order and the rule to show cause issued thereunder.

"The defendants will be prepared to present arguments on this question on November 27, the time fixed by the Court in its order, as we understand it, for the hearing of this case." [R. 503.]

26. Thereupon, the Court, finding that a contempt had been alleged and that the alleged contempt had not been sufficiently

purged by the defendants' return, ordered that the matter be set down for trial on November 27, 1946. [R. 500, 507, 508.]

27. On November 26, 1946, defendants filed and served upon plaintiff a motion to discharge and vacate the rule to show cause in which they asserted that the Court was without jurisdiction over the subject matter of the cause; that equity will not enjoin the commission of a crime; that this was a proceeding for a criminal contempt; the defendants suggesting that it was based wholly on hearsay, information and belief and should have been presented as an independent proceeding; and, finally, that the restraining order was void because it contravened the First, Fifth, and Thirteenth Amendments to the Constitution of the United States. [R. 82–85.]

28. On November 27, 1946, and again on November 29, 1946, with the defendant Lewis personally in court on both days and both the defendant Union and the defendant Lewis represented by counsel, arguments were presented in support of and in opposition to the motion to discharge and vacate the rule to show cause. [R. 115–201.]

29. On November 27, 1946, before the expiration date of the temporary restraining order issued on November 18, 1946, the court, on plaintiff's application and for good cause shown, over objection of defendants extended said temporary restraining order for a like period of ten days. [R. 85–86, 158–161.]

30. On November 29, 1946, this court denied defendants' motion to discharge and vacate the rule to show cause and set forth its reasons therefor in an opinion which

appears in the record. [R. 90, 202–204.] Thereupon, the defendants entered pleas of not guilty, waived their rights, if any, to an advisory jury and the case proceeded to trial before the court. [R. 205.]

31. The defendants were, before the trial, apprised of the fact that they were charged with both a civil and a criminal contempt [R. 66–68, 72–73, 82, 84, 196–198, 204, 267]; were subsequently advised, in advance, of the names and identities of witnesses to be called by the plaintiff [R. 241–242]; and were, by their own admission in open court, liberally informed as to all relevant information and were given every opportunity to meet the contentions of the plaintiff. [R. 267.]

32. A full and complete hearing extending over a period of four days, was had at which the parties were given full opportunity to present evidence, to cross-examine witnesses, to present argument and to avail themselves of any and all rights to which they might be entitled. [R. 111–334, 449–508.]

33. Throughout all hearings on this matter, commencing with the hearing on November 25, 1946, defendant John L. Lewis was personally present before this court.

34. The defendants, and each of them

(a) have at all times since 2:15 p. m. on November 18, 1946 permitted to continue in effect the notice of alleged termination given by the defendant John L. Lewis to the Secretary of Interior on November 15, 1946; [R. 503.]

(b) have instigated, induced and encouraged the workers at said mines to interfere, by strike, slowdown, walkout and cessation of work, with the operation of

said mines by continuing in effect the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement; [R. 6, 37, 282–286, 484, 503.]

(c) have completed the calling of a strike and have completed the instigation, inducement, and encouragement of the mine workers at the bituminous coal mines in the Government's possession to interfere, by strike, slow-down, walkout and cessation of work, with the operation of said mines, by permitting to remain outstanding the aforesaid notice of November 15, 1946, purporting to terminate the so-called Krug-Lewis Agreement; [R. 6, 37, 282–286, 484, 503]

(d) have instigated, induced and encouraged the workers at said mines to interfere by strike, slow-down, walkout, and cessation of work, with the operation of said mines, thereby interfering with and obstructing the exercise by the Secretary of the Interior of his functions under Executive Order No. 9728 and under the War Labor Disputes Act, and with the performance of other governmental functions, by failing to withdraw the notice of November 15, 1946, purporting to terminate the Krug-Lewis Agreement, and by failing to announce to and notify the members of defendant union employed at said mines that said notice of November 15, 1946 was withdrawn, and by failing to notify said members of defendant Union that there is in force and in effect an agreement or contract between the defendant Union and the United States of America, that is, the so-called Krug-Lewis Agreement; and [R. 2, 6, 9, 36, 37, 207, 208, 210, 211, 282–286, 289, 345–398, 484, 486, 503]

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(e) have interfered with this court's jurisdiction and have impaired and obstructed the determination of this case by the court. [R. 6, 37, 67–68, 282–286, 289–290, 484, 487, 503.]

35. As of November 20, 1946 there were approximately 76,000,000 tons of bituminous coal on hand and if the current work stoppage continues production would then be at the rate of about 658,000 tons a week or about 5.3 percent of the normal production of about 12,500,000 tons a week. [R. 37, 290–291.] Normal requirements of bituminous coal during a three months' period beginning December 2, 1946 would be at the rate of approximately 54,000,000 tons a month and if all available coal could be treated as a pool, although such ideal distribution cannot as a practical matter be obtained, to be used for an assumed normal consumption the supply on hand on November 20, 1946 would last about 37 days. [R. 291–292.]

36. The characteristics of the economy of the United States make it peculiarly vulnerable to a stoppage in coal production, largely because of its great dependence on machines, about 43 percent of all energy produced in the United States being derived from bituminous coal. [R. 293.] Four-fifths of all energy used in driving locomotives on Class 1 railroads is derived from bituminous coal; about four-fifths of all fuels and energy-producing materials used in the production of steel is derived from bituminous coal; over 50 percent of all energy used in the production of electric power by public utilities is derived from bituminous coal; and about four-fifths of all energy obtained for electric power is derived from bituminous coal. Over 80

percent of Class 1 railroads, over 60 percent of public utilities and steel-producing industries, would have to shut down completely within sixty days if the current coal stoppage continues for that length of time. [R. 294.]

37. If the current work stoppage were to continue for a sixty-day period there would be a decline in total employment of at least 5,000,000 full time workers and the national income would decline from the present rate of $170,000,000,000 per year to a rate of $150,000,000,000 per year with a resulting loss in income paid to workers at the rate of considerably more than $1,000,000,000 per month, and with a loss of national income, a fraction of which has been estimated at one billion to one and one-quarter billion dollars during that period. [R. 294.] A loss of even one billion dollars in income payments, only a fraction of the loss which would actually be suffered from a continued work stoppage, would result in a loss to the United States of tax revenues of about $280,000,000. [R. 296–297.]

38. The current work stoppage has caused and will continue to cause irreparable injury to the plaintiff, to the people of the United States and to the industry and economy of the United States. [R. 1–9, 35–51, 90–99, 205–334, 335–488.]

39. The coal produced by the mines now affected by the work stoppage is indispensable for the continued operation of the national economy during the transition from war to peace. [R. 2, 9, 335.]

CONCLUSIONS OF LAW

1. The United States in seizing the mines pursuant to Executive Order 9728 and in

operating them following such seizure was at all times exercising its sovereign functions derived from the Constitution and laws of the United States.

2. The defendants, and each of them, have obstructed and interfered with the exercise by the United States of its sovereign functions.

3. The defendants, and each of them, have unlawfully coerced, instigated, induced, and encouraged the mine workers at the bituminous coal mines in the Government's possession to interfere by strike, slow-down, walkout, cessation of work, or otherwise, with the operation of the coal mines.

4. By reason of the facts found in paragraphs numbered 34 (a) through 34 (e), above, the defendants, and each of them, have at all times since the service upon them on November 18, 1946, of the temporary restraining order of this Court, wilfully, wrongfully and deliberately disobeyed and violated the terms of the said temporary restraining order, and have obstructed and interfered with the determination of this case by the Court.

5. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

6. The defendant United Mine Workers of America at all times since the service upon it on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, been guilty, and is now guilty of a criminal contempt of this Court.

7. The defendant John L. Lewis at all times since the service upon him on November 18, 1946, of the temporary restraining

order, has, beyond a reasonable doubt, committed and continues to commit a civil contempt of this Court.

8. The defendant John L. Lewis at all times since the service upon him on November 18, 1946, of the temporary restraining order, has, beyond a reasonable doubt, been guilty and is now guilty of a criminal contempt of this Court.

U. S. GOVERNMENT PRINTING OFFICE, 1947